Public Utilities

FORTNIGHTLY

August 17, 1939

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

Your Customers Will Readily Buy More Domestic Load to Operate

Genuine SILEX GLASS COFFEE MAKER

TRADE MARK REGISTERED U. S. PAT. OFF.

Promote the Anyheet Control Silex

Keeps coffee at drinking temperature indefinitely builds added load. Retails from.... **$5.95**

PROMOTE Silex! It's an easy way to plug in more domestic load in every home on your lines! Every Anyheet Control Model Silex Glass Coffee Maker adds an average of 97 KWH. Multiply this figure by the number of homes on your lines and you have a load building possibility worth going after!

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These modern features have made Silex the back-bone of many utility company promotions:

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- **Pyrex Brand glass used exclusively**
- **Filtration through cloth held under spring tension**
- **Handle on upper as well as lower bowl**
- **Electric Table Models have quick cooling stove . . . brewing completed without removing glass from stove**

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Creators of the Glass Coffee Maker Industry

Genuine SILEX GLASS COFFEE MAKER

TRADE MARK REGISTERED U. S. PAT. OFF.

BREWING COMPLETED WITHOUT REMOVING GLASS FROM STOVE

ELECTRIC TABLE MODELS FROM $4.95. KITCHEN RANGE MODELS FROM $2.9

Editor—HENRY C. SPURR
Associate Editors—ELLSWORTH NICHOLS, FRANCIS X. WELCH, NEIL H. DUFFY
Financial Editor—OWEN ELY

Public Utilities Fortnightly

VOLUME XXIV *August 17, 1939* NUMBER 4

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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GATE KEEPER HOUSES
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GARAGES
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WAITING ROOMS
CRANE CABS
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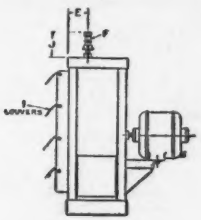

This Grinnell appliance offers heating satisfaction to a market you may have been missing—and a worthwhile load to you. The locations listed above, and similar ones you know of in the territory you serve, are ideal spots to install the Thermolier Electric Type.

It provides simple, easy installation, and its adaptability is such that it meets a great variety of unusual heating requirements. The specially built electric fan, combined with a dependable long life heating element which is automatically protected, assures a full measure of even heat wherever this appliance is installed. Six sizes and capacities. Write today for full details on Thermolier Electric Type for your Sales Department, and consider this dependable unit heater for your own power plants and substations. Grinnell Company, Inc., Executive Offices, Providence, R. I. Branch offices in principal cities.

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GRINNELL THERMOLIER

Pages with the Editors

As this issue of the FORTNIGHTLY goes to press, delegates are gathering for the fifty-eighth annual convention of the American Transit Association, to be held in Los Angeles from August 9th through August 12th, and in San Francisco from August 14th through August 16th. And shortly after this issue is distributed the National Association of Railroad and Utilities Commissioners will assemble for its annual meeting at Seattle, Wash., from August 22nd through August 25th.

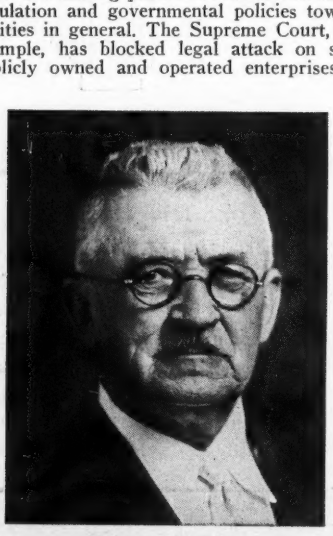
IT is not often that we have the opportunity of extending our greeting to two national conclaves interested in the field of utility regulation within the same fortnight. However, we feel fairly certain both the commissioners and the transit men will find their respective assemblies for the year 1939 of more than passing interest and profit.

To the state commissioners it will appear obvious that the past twelve months have marked a turning point in the annals of utility regulation and governmental policies toward utilities in general. The Supreme Court, for example, has blocked legal attack on such publicly owned and operated enterprises as the TVA, thereby, in effect, thrusting yardstick competition to the fore as a part of the future regulatory picture.

JOHN A. MILLER

Forty-eight varieties of standards make bus regulation a mess.

(SEE PAGE 201)



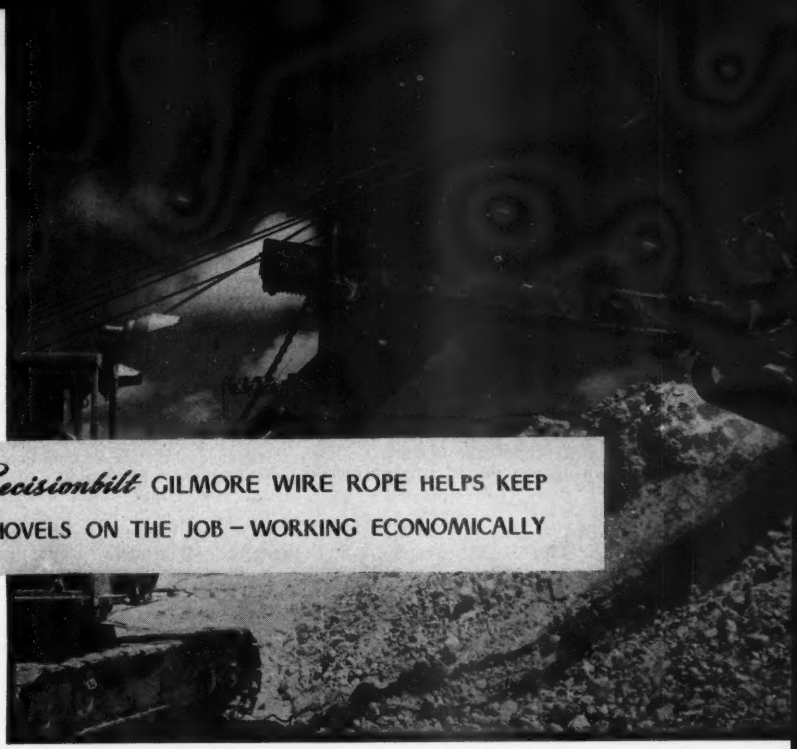
WILL M. MAUPIN

The pedestal of a state commissionership can easily turn into a shining target.

(SEE PAGE 195)

ON the other hand, Congress has more recently shown a disposition to curb Federal power ventures and restrict government competition with private enterprise as a matter of legislative policy. Meanwhile, the Federal commissions have had a full year indeed; the SEC has begun supervising holding company reorganization; the FCC has reported on its special telephone investigation; and the FPC has been struggling to maintain and increase its jurisdictional boundaries.

THOSE in the transit field for the past twelve months have witnessed some slackening in the rate of transit system abandonment made so evident in the recent release of U. S. Census figures on electric railway operations through the year 1937 (see page 238 of this issue). There are indications that centralized transit service has now reached a point in its economic evolution where it can consolidate its position and continue its future existence as an essential and even flourishing part of the life of every metropolitan community.



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Every strand is perfectly lubricated by a new scientific process.

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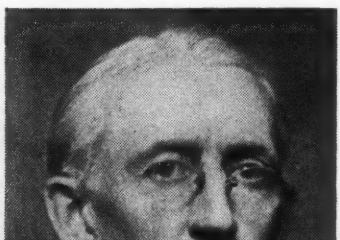
J & L — PARTNER IN PROGRESS TO AMERICAN INDUSTRY

ONE of the contributors to this issue, who will be readily remembered by the state commissioners, is JAMES B. WALKER, who served as secretary of the National Association of Railroad and Utilities Commissioners from 1917 to 1934. During approximately the same period he was secretary of the old New York Public Service Commission for the first district and for the New York Transit Commission which succeeded it in 1921. Prior to his association with utility regulation in New York city, which began in 1908, MR. WALKER was a newspaper man. He graduated from St. Vincent College in Westmoreland county, Pennsylvania, and in 1883 became managing editor of his home-town newspaper, the *Helena* (Mont.) *Herald*. In 1896 he shifted to the editorial desk of the *Salt Lake* (Utah) *Tribune*, and the following year became managing editor of the *Syracuse* (N. Y.) *Herald*.

IN 1901 MR. WALKER'S eastward journalistic trend brought him to the managing editor's desk of the *New York Daily News*, then published by the late Frank Munsey. MR. WALKER also is well known to the transit men as the author of "Fifty Years of Rapid Transit," a history of New York city's efforts to provide an adequate system of internal transportation for the great metropolis.

COMMISSIONER WILL MAUPIN is the author of the article on the trials and tribulations of the state regulatory commissioners which leads off this issue. He will be readily recalled by FORTNIGHTLY readers as a member of the Nebraska State Railway Commission. He is another regulatory expert who entered the field from a journalistic background. Born in Callaway county, Missouri, in 1863, he started in the newspaper business at an early age and became one of the most well known figures in Nebraska journalism. For a number of years he served as editor on William Jennings Bryan's *Commoner*.



JAMES B. WALKER

Is the New York Power Authority a do-nothing body, existing to heckle regulation?

(SEE PAGE 212)

IF it were possible by some magic juggling of time and place to have the state commissioners and the transit men hold a joint session in Seattle, Los Angeles, San Francisco, or some other place on the West Coast, there is one subject of mutual interest that would be almost bound to arise during the discussion. That has to do with the regulation of bus standards by state commissions. The bus operators seem to be almost unanmiously convinced that there is too much of this kind of regulation, or at least that it is not properly coördinated with the real long-range interest of the riding public. The state commissioners in all probability are inclined toward a different view.

IN any event, there is presented in this issue a challenging article on the subject from the viewpoint of the bus operator by JOHN ANDERSON MILLER, whose qualification is best attested by the fact that he has been editor of *Transit Journal* since 1930 and has served in varying editorial capacities on that publication since 1923. MR. MILLER was born and raised in Newark, N. J. He graduated from Yale in 1915 (Ph. B.) and entered the service of the Public Service Railway as a cadet engineer in the same year. Some may recall him as editor of *Aera*, the official publication of the American Transit Association, from 1927 to 1928. He served as an officer with the Army Engineers during the war and is a member of a number of engineering societies.

JUST by way of making the featured contributions of this issue unanimously the product of editors, we present an article on motor carrier regulation by MORRIS H. GLAZER, who, for the past six years, has been editor of *Transport Topics*, the official organ of the American Trucking Association—a publication of which he was the founder. Older readers of the FORTNIGHTLY also may recall the time when MR. GLAZER was a member of our own editorial staff, on which he served as financial editor in 1932. MR. GLAZER was born in Leavenworth, Kan., and graduated from the University of Missouri. He has served on a number of newspapers, including *The Washington Post* and the *Philadelphia Record*.

THE next number of this magazine will be out August 31st.

The Editors

ONE REMINGTON RAND Bookkeeping Machine *Does the work of* TWO

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BALTIMORE, MD., U.S.A.

June 12, 1939

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Buffalo, New York

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Wm L. Bean
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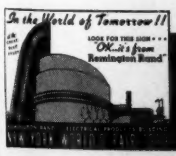
Bookkeeping Machine posts customer's ledger AND statement simultaneously, through the exclusive dual printing feature—accounts payable AND remittance advice simultaneously, and other applications—no carbons, all originals.

The story told by Mr. Bean's letter is duplicated day after day, in every kind of business, in all parts of the country. Time and again, one or more Remington Rand Bookkeeping Machines replace a greater number of less flexible machines . . . just another proof that the Model 890-J, with its unique, 10-key, touch method keyboard, saves valuable minutes that mean money. Remember—Remington Rand makes all types of accounting equipment, is the one manufacturer prepared to advise you impartially. It will pay you well to call in the Remington Rand salesman. Why not phone him today?



Remington Rand Inc.

BUFFALO • NEW YORK

Canadian Headquarters 199 Bay Street, Toronto

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 65-128, from 29 P.U.R.(N.S.)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

JOHN N. GARNER
Vice President of the United States.

"I never make criticisms or comments on anything."

ROBERT A. TAFT
U. S. Senator from Ohio.

"The importance of a presidential program has exceeded the importance of political platforms."

BRUCE BARTON
U. S. Representative from New York.

"The next administration, if it is any good, will spend most of its time in saying 'no.'"

J. R. RICHARDS
Chairman, California Reëmployment Commission.

"Tax exemption is an absolute dam that stops the flow of money into business and capital investment."

LEWIS O. BARROWS
Governor of Maine.

"The people of New England are off the New Deal, because they fear disaster lies ahead in the spend-lend programme."

CLIFFORD E. PAIGE
President, The Brooklyn Union Gas Company.

"The gas industry in America is today unified as it has never been before, especially in its efforts to render the best public service."

ISADOR LUBIN
Commissioner of Labor Statistics of the U. S. Department of Labor.

"The construction of public works has long been a first line of defense against unemployment in periods of depression."

FLOYD L. CARLISLE
Chairman of the Board, Consolidated Edison Company.

"This country is ready to increase its production on a basis that will make other times of recovery look pale by comparison."

CLYDE L. SEAVEY
Chairman, Federal Power Commission.

"If problems affecting the interests of the owners of utility properties, those of the management, those of the investor in the stocks and bonds of the utility, and those of the consumer were always immediately and automatically resolved in the best interests of all concerned, Utopia would be established and regulation would become unnecessary."

HARRY T. ROHS
Writing in The Wall Street Journal.

"From the standpoint of the condition of its own house, the electric power and light industry at present is probably in the best shape of any time in its history."

JAMES C. OLIVER
U. S. Representative from Maine.

"Purchasing power alone, my friends, can unlock the floodgates of plenty and start anew the wheels of industry to humming a song of recovery."

MILLARD E. TYDINGS
U. S. Senator from Maryland.

"The present national administration is literally filled with counterparts of those who wielded power in ancient Rome. These men preach democracy and free enterprise while they set in motion the machinery to destroy it."

THOMAS M. GIRDLER
Chairman, Republic Steel Corporation.

"There is abroad in the land the stirring of a great middle-class revolt against crackpots, radical legislation, ruinous extravagance, and the business baiting which have characterized our government for the last six years."

JENNINGS RANDOLPH
U. S. Representative from West Virginia.

"In these stirring times, when the march of progress has been stimulated as never before in the history of the world, it is the high duty of a member of Congress to keep his gaze focused steadily upon the horizon."

LEE E. GEYER
U. S. Representative from California.

"The days of our national Santa Claus are numbered. . . . The national credit is in jeopardy, and at last the people are realizing that a national Santa Claus is no more real than the Santa Claus who filled our stockings in childhood."

GEORGE W. NORRIS
U. S. Senator from Nebraska.

". . . although I haven't the slightest personal feeling or grievance against Mr. Farley, no man lives who can be chairman of the national committee of a great party and at the same time run the postoffice as it ought to be done. It's absolutely inconsistent."

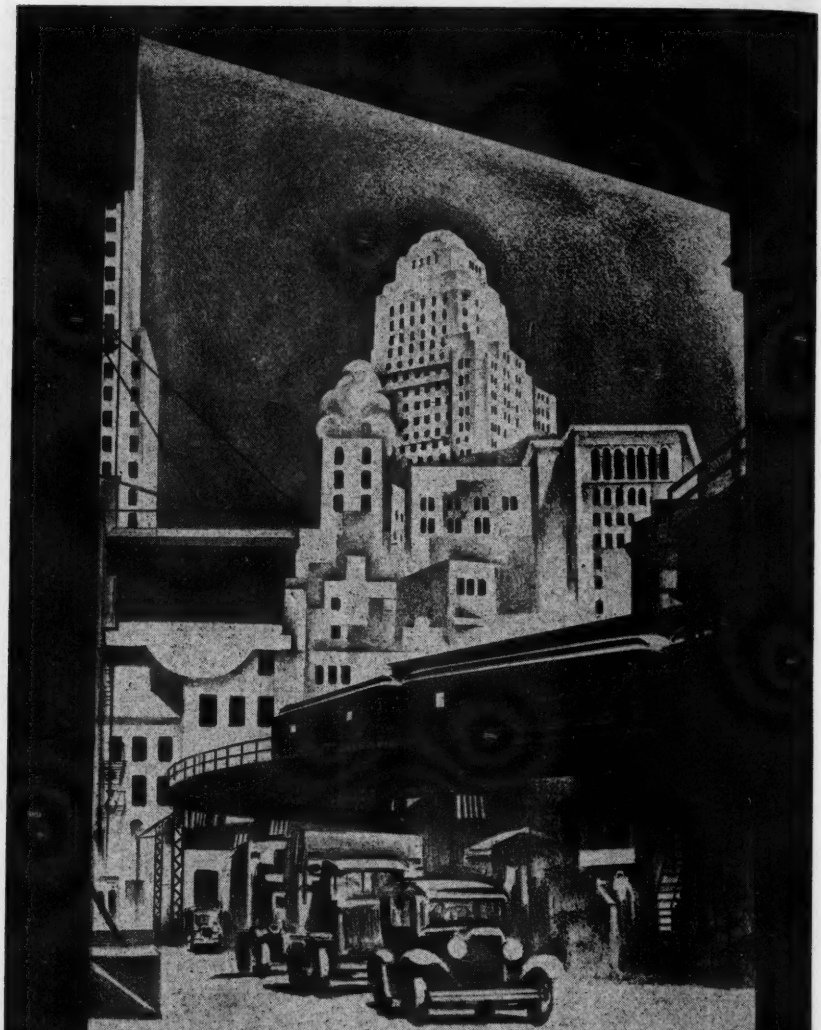
MARTIN L. SWEENEY
U. S. Representative from Ohio.

"I can fully appreciate the sentiment of those who believe that the Federal government should get out of this employment and relief business, but until such time as industry can assume its full responsibility in taking from the government payrolls those who should be working in the factories and shops of our country, there is no alternative for the nation except shoulder the responsibility of at least feeding, clothing, and giving shelter to those making up the government itself."

Utilities Almanack

AUGUST

17	T^{h}	¶ *League of Iowa Municipalities ends convention, Cedar Rapids, Iowa, 1939.* ¶ *North Carolina League of Municipalities convenes, Wrightsville Beach, N. C., 1939.*
18	F	¶ *International Association of Electrical Inspectors, Northwestern and Southwestern Sections, concludes meeting, San Francisco, Calif., 1939.*
19	S^{a}	¶ *Pacific Coast Gas Association will hold meeting, San Francisco, Calif., Sept. 5–7, 1939.*
20	S	¶ *Governmental Research Association will convene, Princeton, N. J., Sept. 6–9, 1939.*
21	M	¶ *Appalachian Gas Measurement Short Course opens, Morgantown, W. Va., 1939.* ¶ *Illuminating Engineering Society begins meeting, San Francisco, Calif., 1939.*
22	T^{u}	¶ *National Association of Railroad and Utilities Commissioners convenes for annual session, Seattle, Wash., 1939.*
23	W	¶ *American Water Works Association, Virginia Section, will hold session, Charlottesville, Va., Sept. 7, 8, 1939.*
24	T^{h}	¶ *American Water Works Association, Minnesota Section, opens convention, Duluth, Minn., 1939.*
25	F	¶ *Maryland Utilities Association starts annual fall convention, Ocean City, Md., 1939.*
26	S^{a}	¶ *Second National Institute for Traffic Safety Training, National Safety Council, concludes 14-day session, University of Michigan, Ann Arbor, Mich., 1939.*
27	S	¶ *Gas Industry Day will be celebrated, Golden Gate Exposition, San Francisco, Calif., Sept. 9, 1939.*
28	M	¶ *American Dietetic Association opens convention, Los Angeles, Calif., 1939.*
29	T^{u}	¶ *Fifth International Conference on Timber Utilization opens, Zurich, Switzerland, 1939.*
30	W	¶ *National Bus Traffic Association will hold annual meeting, New York, N. Y., Sept. 11, 12, 1939.*



From an etching by L. Lozowick *Courtesy, Kennedy & Co., New York*

Hanover Square

Public Utilities
FORTNIGHTLY

VOL. XXIV; No. 4 AUGUST 17, 1939

I'm in a Ticklish Spot—What Am I to Do?

A Nebraska state railway commissioner asks whether he should uphold the state Constitution and laws at the risk of losing Federal REA funds for the state or—well, perhaps it's a case for the proverbial Philadelphia lawyer.

BY WILL M. MAUPIN
MEMBER, NEBRASKA STATE RAILWAY COMMISSION

YES, puzzled. Wondering which of two stools to select, I am in grave danger of falling between them and getting a terrific bump; perhaps a fatal one, speaking politically.

Shall I violate my official oath to uphold the Constitution of the state of Nebraska and the statutes enacted thereunder, thereby risking impeachment and probable loss of a job I rather like? Or shall I uphold Constitution and statutes, thereby incensing some eminent gentlemen in Washington to the extent that they will refuse to lend any more money to power districts being formed under Nebraska statutes?

It is a very clear case of "be damned if you do, and be damned if you don't." And to be really frank about it, I'll be damned if I know what to do.

I want as many miles of electric transmission lines constructed in Nebraska as possible. I would love to see the day when every home, urban and rural, in my beloved state is wired for cheap electricity and the "juice" consumed. I really believe that the privately owned utilities would, and

do, welcome rural electrification through government financing. It makes the people electric-minded. Rural electrification in Nebraska presents problems not noticeable in more thickly settled states. We have only two cities with a population exceeding 75,000, and fewer than fifteen with a population exceeding 5,000. More than half of Nebraska's total population of approximately 1,400,000 live in the eastern one-third of the state. The population is 17 to the square mile as compared to the following adjoining states: Iowa 57, Kansas 62, Missouri 52. One Nebraska county with an area of 6,500 square miles has a population of less than 1.5 per square mile. Who is going to finance rural electrification in that county? Certainly not the REA with its insistence upon not less than 2.6 customers per mile of line, and certainly no private utility would, or could, finance it.

To date Nebraska has been allocated more Federal funds than any other state, Indiana perhaps excepted, for rural electrification. On top of these millions is another allocation of about $60,000,000 for "irrigation, flood control, and hydroelectrics." But irrigation from it all is less than 250,000 acres, and reservoirs ostensibly for flood control take more land out of cultivation and taxation than ever was flooded. Obviously, most of the money is for the generation of electricity.

And right there is where the puzzle comes that is worrying the brains, if any, of this utility commissioner. Shall I violate my oath and the Nebraska statutes in order to get more REA money in Nebraska; or shall I make good my oath to uphold Constitution and statutes and have the REA tell me, "no more money for rural electrification in Nebraska"?

The Nebraska State Railway Commission was established by constitutional amendment in 1907. I quote, in part, from § 20 of Art. 4 of the Nebraska Constitution:

> The power and duties of such commission shall include the regulation of rates, service, and general control of common carriers as the legislature may require by law. *But, in the absence of specific legislation, the commission shall exercise the powers and perform the duties enumerated in this provision.*

No broader grant of power was ever given a state utility commission. Now I come to the statutory provisions that are raising all my troubles. I quote from 86-313 of the Compiled Statutes for 1929, the last word on the subject:

> *Electric transmission, telephone, telegraph lines, other lines, sufficient clearance*: All lines hereafter constructed for the transmission of electric current, including telephone and telegraph lines, on the public highways or in other places in this state, except as hereinafter provided, shall provide sufficient clearance between such lines and existing properly constructed transmission, *telephone, and telegraph lines so that the reasonable safety, operation, and efficiency of existing lines shall not be interfered with.*

Before any transmission line may be constructed in Nebraska the application must be made to the railway commission, together with a detail map of proposed routes, estimates of material and costs, crossings, conflicts, etc., and all provisions made that "the reasonable safety, operation, and efficiency of existing lines shall not be interfered with." If that does not clearly imply that the builders of an electric transmission line must make good the expense of removing unreasonable inductive interference from existing properly constructed transmission lines, then I learned to read at a great waste

of time and a lot of useless mental exertion.

With the privately owned electric utilities we have no trouble. When they build a line and unreasonable inductive interference results from its operations, they put up the money to remove that interference and never whimper. But it is different with the REA. That bureau coldly notifies the Nebraska commission that it doesn't have a blooming word to say about it; that when a public power district builds, all it has to do is to build according to the national safety code, then build where it pleases, and it's just too bad for the little rural telephone lines it puts out of commission. Bolstered by this ukase from Washington the public power districts claim that the Nebraska commission has neither the authority nor the right to enforce the plain statutes of the state.

When the commission hints that the statutes of Nebraska take precedence over the orders of a Federal lending agency, the public power district authorities tell us that no more money will be allocated to Nebraska for rural electrification. Further they tell the commission that if it dares to deënergize the lines the people will arise in their wrath and either abolish the whole darned commission, or see to it that its members are thrust into political oblivion. On the other hand, the owners of the little rural telephone concerns notify us that if the commission does not enforce the law above quoted, they, too, will vent their wrath upon our devoted, if empty, craniums.

What to do! What to do!!

THE REA authorities say "not a dime to remove inductive interference." But recently they sent a high-priced attorney by plane from Washington to Lincoln to tell us face to face the ultimatum, and at an expense that would remove the inductive interference caused by federally financed public district power lines from about 75 miles of rural telephone lines.

Either the Nebraska commission sticks out its collective neck to garner the wrath of those who want rural electric service, or it lays down that collective neck to be used as a door mat by the REA authorities. Isn't it one whale of a mess!

The public power district authorities tell the commission that it does not have the authority to deny the granting of a public power district application; that its only authority is to affix a rubber stamp of approval and let it go at that, law or no law; that the commission has no authority to exercise jurisdiction in the matter of public convenience and necessity; and that it can build where and when it pleases, engage in destructive competition,

¶ "BEFORE *any transmission line may be constructed in Nebraska the application must be made to the railway commission, together with a detail map of proposed routes, estimates of material and costs, crossings, conflicts, etc., and all provisions made that 'the reasonable safety, operation, and efficiency of existing lines shall not be interfered with.'*"

practically confiscate privately owned electric utilities, and ruin rural telephone corporations whenever it so pleases. Maybe it can, but not legally —that is, not until the present statutes of Nebraska, in such cases made and provided, are either repealed or declared unconstitutional by act of the legislature.

Now, if you, dear fellow and long-suffering fellow commissioners, were standing in my well-worn shoes, what would you do about it? R'ar up on your hind legs and tell the REA where to head in at, or tuck your tail between your legs, metaphorically speaking, and just slink? Believe it or not, it is either r'ar or tuck!

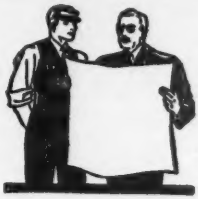
I am not worrying about abolishing the commission, or retiring to private life. If they abolish the present commission they will have to establish some other form of regulatory body. If they retire me to private life in 1940 —well, I made a pretty fair living before I got this job, and I think I can do it again. My worry is of a wholly different character, as I have endeavored to explain.

Of course I would hate to do anything that would stop the flow of REA and WPA money into Nebraska. Believe me, we Nebraskans saw our millions flowing out to be expended on harbors and lakes and eastern rivers for years on end, and it was a relief to get some of those millions back. Of course we will eventually have to send those dollars back again in the shape of electric rates sufficiently high to amortize the loans, pay the interest, and bear the expense of administration —but haven't we got something like forty years in which to do it?

Getting down to brass tacks, the facts are that our trouble is not an insufficient output of electric energy, but an insufficient market for what we are producing or can produce with existing agencies. I could, if needed, raise a capital of $500 and with it establish a plant for manufacturing husking pegs and make a million husking pegs a day. Making them would be easy, but finding a market for them is something else again. Are not the situations comparable?

But I haven't really started. The law under which these public power and irrigation districts are organized is familiarly known as Senate File 310. It was enacted in 1933. A district is organized, and when all is ready the organizers present their plan and outlines of the proposed district to the state engineer, who is in charge of the department of highways and irrigation. About all he does is say it is all right and grant what is in effect a charter. It is just like a corporation filing its articles of incorporation with the secretary of state. Then the rest is up to the state railway commission, and that's where added puzzlement comes in. The commission can set rates for common carriers, but Senate File 310 specifically provides that the commission cannot set rates for the public power and irrigation districts—although a law not repealed declares that irrigation companies are common carriers and their rates subject to commission jurisdiction. So, while the commission can fix the rates of irrigation corporations it seems to be estopped from setting the rates for carrying water transported by public power and irrigation districts.

Will somebody please send us that



Allocation of Federal Funds

"To date Nebraska has been allocated more Federal funds than any other state, Indiana perhaps excepted, for rural electrification. On top of these millions is another allocation of about $60,000,000 for 'irrigation, flood control, and hydroelectrics.' But irrigation from it all is less than 250,000 acres, and reservoirs ostensibly for flood control take more land out of cultivation and taxation than ever was flooded. Obviously, most of the money is for the generation of electricity."

mythical "Philadelphia lawyer" to help us solve the puzzle?

SENATE File 310 also makes provisions that these power and irrigation districts may not be taxed. The law declares that an irrigation corporation is a common carrier subject to commission jurisdiction. Then another law says irrigation performed by a power and irrigation district is not a common carrier subject to commission jurisdiction. But an irrigation distribution system owned by a corporation is subject to taxation, while an irrigation district organized under Senate File 310 is not.

But that is only a small part of the puzzle, for the reason that irrigation is such a small part of these public power and irrigation districts that the commission has not yet been called upon to give it notice. Most of the talk is about irrigation and practically all of the action has to do with the generation and distribution of electricity. About the only time we hear irrigation mentioned is when power district promoters tell us that it depends in large measure on having a supply of cheap electricity to operate pumps for well irrigation.

Now, while admitting that they must make application to the commission for a certificate granting the application before they can begin construction, the promoters of said districts say that while the commission may, and must, grant the certificate, it has no right or power to deny the application—the statutes to the contrary notwithstanding.

IN other words, they assert that when it comes to deciding between the Constitution and statutes of Nebraska, and the orders from the head of a Federal-spending agency in Washington, then to Hades with Constitution and statutes. Why, even one public power district attorney actually shook his

finger in the faces of the Nebraska commissioners and said the statute providing removing unreasonable inductive interference from a properly constructed grounded telephone line was a "phony"; that a grounded telephone system constructed thirty or forty years ago was not properly constructed for the reason that its builders should have had prophetic vision enough to look thirty or forty years into the future and see all these latter day developments in electrical distribution.

Now tie that if you can!

But I must back up a bit if I am to get all the elements of this jigsaw puzzle before my readers, if any.

It is claimed by public power district authorities that the Nebraska Railway Commission—and by the way that title is a misnomer, for it is really a utilities commission—cannot exercise jurisdiction as to convenience and necessity. Not being a lawyer, I claim that the commission has that jurisdiction, but when the matter first came up my two colleagues, one a lawyer and the other a "watchful citizen," as he titled himself, disagreed. Now the matter is going to be taken to the supreme court for a decision. To date none of my majority opinions has been overturned by that court, and my two dissenting opinions have both been upheld, so I am confident. But no one can foretell what a court will do.

To bolster up my contention that the commission has jurisdiction as to public convenience and necessity, I again quote from the statutes:

Section 86-315, Art. 3.—"The state railway commission shall have full power and authority to prohibit the construction of any line or lines found to be in violation of § 1 (86-313) of this act and after hearing provided in § 2 (86-314) shall make such orders and prescribe such terms and conditions for the location and construction and operation of the proposed lines, as to it may seem just and reasonable; *and make such orders in the premises as in its judgment would best protect the rights of all parties interested and those of the general public.*"

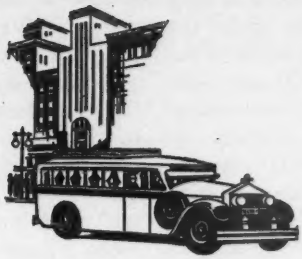
Unless, as some wise old gentleman said, "language is given us in order that we may conceal our thoughts," that means the Nebraska commission has the whole say so, meaning that it shall consider public convenience and necessity when application is made for the construction of an electric transmission line. The claim that an electric transmission line is not a "common carrier" is wholly beside the issue. And I'll stick to it until the Supreme Court says I'm wrong, and after that—well, I have the highest respect for the courts, when I agree with them.

But, perhaps I should quit trying to explain the situation in which I find myself before I subject myself to the criticism of the young legislator who sought the first opportunity to demonstrate his oratorical ability before his colleagues. Arising to his feet he said:

"Mr. Speaker; the generality of mankind in general is prone to be unkind to the generality of mankind in general."

"Sit down, you darned fool; you're crawling back into the same hole you just crawled out of," growled an old timer.

I have tried to explain my predicament. Now will some wise and kindly fellow commissioner tell me how to crawl out of the hole. I promise not to crawl back in.



Nuisance Regulation of Busses By State Commissions

How exacting requirements of regulatory authorities add unnecessarily to the cost of vehicles bought by the transit industry.

By JOHN A. MILLER

WHERE does the proper field of government regulation end and that of private business management begin? This is a question which has been receiving more and more attention during the past few years. In the totalitarian countries, of course, the field of government regulation has been extended until there is virtually no field left for private business management. In the United States, on the other hand, most people still cling to the idea that private business management has an important function to perform—a function that cannot so well be performed by any other agency.

THIS is true even in those lines of business which, like the utilities, are "clothed with a public interest," and are therefore subject to a substantial amount of public regulation. For example, a recent survey made by Dr. Gallup's famous American Institute of Public Opinion indicated that about seven people in ten favor leaving the management of the railroads in private hands. But sometimes it appears that the regulatory authorities have overlooked the fact that there is an opportunity for private management to perform a useful service. While they may not favor an outright form of public management, they produce somewhat the same result by indirect means. They seem inclined to demote private management to the position of water boy while they themselves boss the whole job. At least, by the time they have laid down their requirements on accounting, financing, equipment designs, standards of service, and so on, they have entangled the management in so many red tape measures that the opportunity for the exercise of managerial judgment has almost disappeared.

Naturally we have traveled a long way in utility regulation since the establishment of the first railroad commission in Rhode Island 100 years ago. That body and the other early commissions were largely advisory in character, being primarily fact-finding agencies for the state legislatures with no direct authority. Now nearly every state has a public utility commission of some sort and most of them have wide authority. Few thoughtful persons will dispute the need for the exercise of regulatory authority in the complex world of today on a much broader scale than was needed in 1839. A real question arises, however, as to whether regulation is not being carried too far in certain directions.

In the transit field, for instance, operating companies have become subject to many exacting requirements in vehicle design that add materially to the cost of the equipment they buy. Some of these requirements originate with state regulatory authorities, some with municipal authorities, and some with other bodies. Many of them go far beyond what would seem to be necessary for the protection of the public and invade the field that might better be left to private business management.

Take, for example, a regulation enacted by the transit commission of the city of New York which specifies that the minimum distance from the floor of a bus to the top of the window glass shall be at least 57 inches. Why that should be a matter of concern to the regulatory authorities is difficult to understand. Perhaps the requirement had its origin in a spirit of chivalry. A woman of average height standing in a bus can see out the window fairly comfortably if its top is 57 inches from the floor. Few men can comfortably see out of a window of that height, but must stoop if they want to view the passing scenery. Maybe they have to stoop a little less to look out of a 57-inch window than would be necessary with a 56-inch window, but the point seems scarcely to deserve to be made a matter of official regulation.

Unfortunately there is little uniformity in the requirements of the various authorities; each has its own opinions and does not hesitate to embody them in regulations. Consider the matter of safety glass in busses. In Massachusetts the department of public utilities requires simply that every bus shall have in its windshield a type of nonscatterable glass approved by the department of public works. In North Dakota, on the other hand, all the glass used in a bus must be safety glass. Between these extremes come the requirements of most of the other states and those of the Interstate Commerce Commission, which specifies safety glass for the windshield, the window next to the driver, the doors, and the rear windows. The ICC, however, refuses to approve one particular type of safety glass that is accepted in virtually all the individual states.

Or, take the matter of clearance lights. Busses in Connecticut must have two purple clearance lights at the front of the vehicle. In Arizona they must have two white lights at the front of the vehicle and two red lights at the rear. In Pennsylvania one light is required at the front and one at the rear, the former being amber and the latter red. South Carolina requires two amber

Clearance Lights

"Busses in Connecticut must have two purple clearance lights at the front of the vehicle. In Arizona they must have two white lights at the front of the vehicle and two red lights at the rear. In Pennsylvania one light is required at the front and one at the rear, the former being amber and the latter red. South Carolina requires two amber lights at the front and two red lights at the back."

lights at the front and two red lights at the back. Even making all possible allowance for differing conditions in different states it seems incredible that such great variations should be necessary in the simple matter of clearance lights.

Similar differences of requirements exist with respect to many other features of design. New Jersey's regulations state that "window guards shall be provided to prevent seated passengers from inadvertently extending their arms or heads through open windows." In the neighboring state of New York, however, the public service commission has ruled that the use of window guards on the outside of any bus operated locally within its jurisdiction is not to be permitted. Connecticut insists on a minimum aisle width of 14 inches if standees are carried, whereas, New York state is satisfied with a 12-inch aisle. Electric directional signals are allowed in every state except California. There, a manually operated semaphore type of signal is required.

All these special requirements add materially to the cost of the vehicles bought by transit operating companies. This is not so much because the individual items are expensive as it is because their installation interrupts the normal procedure of vehicle construction. Under present-day automotive methods of manufacture a relatively small change in bus design may throw the whole production line out of kilter.

Here is the way the thing works: Let us suppose that the regulatory authorities of some state have a requirement involving an extra lighting fixture in the interior of a bus which is not required in other states. Since this is a particular requirement of only one state the manufacturer has not made provision for it in his standard design, but must make special arrangements whenever he builds vehicles for operation in that state. First his engineering department must carefully examine the design of the vehicle to determine the exact location where the extra fixture can be installed, check possible interference with other features of the design, and make sure of adequate clearances. Provision must also be made by the engineering department for the necessary changes in wiring to connect the additional fixture. Then, in the

shop, it is necessary to cut special holes in the standard headlining sheet to admit the additional fixture, and to install the additional wiring required to connect it. Moreover, special care must be exercised to see that this nonstandard fixture is installed on the particular units which require it. Obviously, these special arrangements will require additional time and slow up the building of the vehicles. Thus, the total cost of such a departure from standard is not merely what the item itself costs, but is a figure which includes also the cost of special handling and installation. The addition of a single lighting fixture costing only $3 or $4 may add $20 or more to the cost of the vehicle by the time it has been installed.

ONE prominent bus manufacturer has estimated that if any single bus should ever be equipped with all the extras which are sometimes required, from $1,500 to $2,000 would be added to the cost of the vehicle. For a bus selling "as built" at $5,000 to $11,000, depending on size, this would mean an increase in cost of as much as 30 per cent. Actually, the extras installed on this manufacturer's busses last year averaged more than $700 per vehicle with a low figure of $162 and a high of $1,170. Not all of these extras were required by regulatory authorities, it is true, but a careful analysis of a large number of specific cases of departures from standard design shows that the regulatory authorities were responsible for a big majority of them, including most of those which add substantially to the cost of the vehicle.

Commenting on the situation, this manufacturer said: "It is appreciated that the purpose of such requirements is essentially to protect the riding public, and perhaps from that angle neither the operator nor the manufacturer can offer any adverse criticism. However, I think we do have a justifiable complaint where the different authorities have such divergent opinions as to what is required. The fact that what one state considers satisfactory its next door neighbor will not approve, offers a serious problem to the manufacturer. If such requirements could be standardized, adequate provision could be made in the standard vehicle design and there would not be the necessity for additional engineering with the resulting increase in cost."

Sometimes the demands of the regulatory authorities are annoying but not particularly difficult of fulfillment. New York, for instance, demands that the "true name" of the owner, lessee, or operator appear on the outside of every bus—a symbol or abbreviated name is not considered sufficient. If, therefore, a bus of the Connecticut Company, carrying only the word "Connecticut" on its side, should want to go over into the state of New York, it would be necessary to attach plates to the side of the vehicle carrying the extra words "The" and "Company" so that the true name, "The Connecticut Company," would appear.

PROBABLY the most costly requirement of any laid down by transit regulatory authorities is that of the New York Transit Commission pertaining to bus ventilation. This commission insists that all busses operated under its jurisdiction shall be equipped with an intake for fresh air at the front roof level and a system of forced ventilation capable of providing 10 cubic

feet of fresh air per minute for each seated passenger. The difficulty here is not so much the quantity of fresh air demanded, but the requirement that it shall be supplied by intake blowers at the front of the vehicle rather than by exhaust fans at the rear. Actually it makes little difference to the passenger how the fresh air is supplied so long as the quantity is sufficient, but it makes a lot of difference in the cost of the vehicle if the whole ventilating system has to be redesigned to meet the requirements of the city of New York.

Some progress has been made in the direction of uniformity of requirements since the operation of interstate busses has been under the jurisdiction of the Interstate Commerce Commission. The Bureau of Motor Carriers of that body has set up a series of safety regulations covering lighting requirements, use of safety glass, clearance lamps, etc., which have been adopted by many of the individual states. In some instances the state's approval has covered only the interstate vehicles entering the state. In other instances the ICC regulations have been adopted for intrastate vehicles as well.

NOTWITHSTANDING this progress there remain far too many special requirements. The situation is not unlike that existing in the early days of the transit industry when each operating company was inclined to dictate the design of the street cars it bought to suit its own particular preference. The result was that the manufacturer never received two successive orders for exactly the same design, not even from the same operating company. He was forced to run what was really a contract shop rather than a manufacturing plant, and the cost of street cars was much higher than would have been necessary with reasonable uniformity of design. Today the transit operating companies are not repeating this mistake with respect to their bus purchases. It would be too bad, therefore, if the regulatory authorities with their individual requirements were to undo all the good resulting from the abandonment of the operators' special demands. Since the Interstate Commerce Commission has been able to establish a single set of regulations for interstate busses operating from Maine to California, it would certainly seem that state and local regulatory authorities should be able to agree on a uniform set of requirements covering the major features of motor vehicle design.

Simple Faith and Public Works

"THERE are simple-minded people who think that because there are present in our society most of the raw materials for unlimited plenty and for a good social order, we need nothing more than laws or revolutions to create that order. Impeding barriers to development should be removed; yet high expectation from revolution generally will bring disillusionment. . . . The miracle makers may build up the hopes of the multitude, but the miracles will continue to lack enduring substance. . . . Those who promise social miracles are wasters of public resources . . ."

—ARTHUR E. MORGAN, *former chairman, Tennessee Valley Authority.*

What the Motor Carrier Act Has Done for Truckmen

Although no Utopia is here or remotely in sight, declares the author, Federal regulation has rescued the industry from its former chaotic condition and has established public confidence in motor transport.

By MORRIS H. GLAZER

THE transformation of a vast incoherent, inchoate mass into even an approximation of order is obviously no overnight matter. Accordingly, any attempt to evaluate the Federal government's attempt to regulate the trucking industry should take that fact into very serious consideration.

When the Motor Carrier Act of 1935 was pending in Congress, among informed persons it was a consensus that its fully beneficial effects, to the public and to the truck operators, could not be realized within five years. A little more than three years now have passed since the law went into effect, but it is the considered opinion of a predominant segment of the great sprawling industry that regulation is already achieving most gratifying results. This opinion is shared by officials charged with enforcement of the act.

In no quarter is there the slightest disposition to make anyone believe that a trucking Utopia is here, or even remotely in sight. To the contrary, minor defects in the law itself and shortcomings in its administration are fully recognized. Being recognized, there is ample reason for belief they can be remedied.

Undoubtedly the outstanding achievement of the Motor Carrier Act has been establishment of public confidence in motor transport. Over a period of years prior to 1935 motor trucking in the United States had grown by leaps and bounds, quite unregulated except for sporadic control by the states. But it had universally transcended such regulation, for interstate operation had become quite as important and widespread as the scurrying about of millions of local vehicles.

The natural result was that interstate trucking, in particular, had become an industry so unstable as to invite the suspicion of its patrons—the public and particularly regular ship-

pers. Cutthroat competition was "the law of the gun" and sharp practices were not unknown.

Out of this situation arose the demand for intervention by the Federal government. Nor did this demand emanate entirely, or even in large part, from the public. In general it came from the decent element of the industry—those who perceived the glorious opportunity spread before them and at the same time realized it could be grasped only after a "purge." This purge need be no violent thing—merely orderly supervision of trucking for the benefit of all and the general welfare of the nation. This would automatically eliminate undesirable elements.

WHIPPING the Motor Carrier Act into shape was a mighty task. So far as possible the experience gained under the late lamented NRA code was drawn upon, but the ruins of that adventure were wholly inadequate. Then thoughtful leaders in the industry contributed their help to the legislators and finally the act was born, not entirely without the misgivings of its parents.

From that moment, however, public confidence in motor transport has grown, albeit haltingly at times. At last, the general feeling has been, when one engages the services of a carrier coming under the jurisdiction of the new law, there is assurance of a job performed in accordance with known stipulations. Tariffs which must be adhered to are published and operators crossing state lines must obtain from Uncle Sam certification that their operations are of public convenience and necessity.

Perhaps equally important from the public's standpoint is the very notable contribution the Motor Carrier Act has made to the cause of highway safety. In the field of safety the Interstate Commerce Commission has contributed probably more toward uniformity of safety measures than any previous effort by any organization, official or unofficial. This is true by reason of the fact that before the act went into effect trucks were subject only to the traffic regulations of the several states in which they operated. These were often conflicting and a generally muddled situation resulted. With the promulgation of the ICC safety regulations, however, several hundred thousand trucks, penetrating every corner of the land, became amenable to uniform rules. The effect of this has been salutary.

IN three-fourths of the states parts of these regulations have been adopted, either by legislative action, by public service commission order, or action by some other official agency. In fourteen states—Arkansas, Georgia, Kentucky, Minnesota, Mississippi, Montana, North Dakota, South Dakota, Tennessee, Texas, Utah, West Virginia, Wyoming, by public service commission fiat, and in Indiana by rules of the state committee on safety authorized by the legislature—the ICC safety regulations have been adopted almost word for word.

Stabilization of the motor carrier industry, while yet far from complete, has progressed to the point of commanding the fullest belief of the industry at large that it is entirely possible through the operation of the Act of 1935. Good practices are develop-

ing rapidly in every phase of the business. This comes about through uniform classifications of commodities, minimum tariffs, billing, collections, insurance requirements, and other methods prescribed by the law.

All of this tends unrestrainedly toward better public relations through inculcation of a knowledge on the part of shippers that they are dealing with men of responsibility and reliability. Prior to April 1, 1936, any information about motor carrier services, rates, interline arrangements, or other pertinent details, was largely hearsay or word of mouth.

With the exception of "memoranda" on rates (in which no one had much confidence because they were not binding) there was, generally, virtually nothing to indicate the points served by a carrier or the rates which would be charged for transporting freight or household goods. Likewise, there was no indication of intelligent treatment of or any attempt to reconcile the rate relationships between various origin territories and competing market areas. Neither was there any systematic method of giving any consideration at all to the relative desirability of various types of traffic. It was generally a dog-eat-dog battle in which the lowest priced man, quite regardless of his ability to perform, got most or all of the business.

WITH the advent of rate regulation, under the Motor Carrier Act, it became necessary for carriers to commit to paper rates which would move the traffic and best protect the interests of all concerned. The initial tariffs were seriously complicated and gave insufficient consideration to origin and destination relationships and the transportation characteristics of the various commodities.

Vast improvement has taken place with the passage of time, and today, through thirty industry-controlled tariff bureaus, noteworthy progress has been made in establishing improved tariff structures. Public hearing facilities have been instituted in virtually all territories, so shippers and carriers alike have the right and opportunity to express in orderly fashion their viewpoints with respect to any proposed changes in rates and to submit data supporting their contentions. This procedure unquestionably has developed widespread improvement in the relationship between the public and motor transport.

In the files of the Interstate Commerce Commission, and posted at the various carrier terminals, are tariffs containing networks of rates which blanket the entire country. Prior to regulation under the Motor Carrier Act, the shipper was quite at the mercy of the carrier and, conversely, carriers

¶ "FROM *a traffic standpoint, the broadest and most significant result of regulation under the* [*Motor Carrier*] *Act of 1935 is creation of a national rate structure serving the public throughout the United States, bringing to all shippers and all localities a broadened, integrated, and convenient service by motor truck, with widespread knowledge of rates and services available everywhere.*"

often had no defense against shippers who asserted their ability to obtain lower rates from someone else. Original carriers, too, found themselves at the mercy of connecting lines.

As to ability to perform a long-distance, interline service at a given rate, such arrangements are now set forth by tariff publication. This fact makes it possible for the carrier to offer, with confidence, a service which was not possible prior to Motor Carrier Act regulation, and the shipper has tariffs from which he may verify such an arrangement and upon which he may base a claim for the service held out by the tariff.

In truth it must be admitted that the system is as yet far from perfect, but substantial improvement will doubtless be forthcoming in the near future; realization of the necessity for coördination and establishment of better relationships is increasing in the minds of the carriers daily.

How widespread has been the effort to build a suitable rate structure is demonstrated by the fact that common carriers by motor vehicle have found it necessary to file with the Interstate Commerce Commission more than 225,000 tariffs. Contract carriers have filed more than 25,000 schedules of minimum rates and 18,000 bilateral contracts. Up to the first of this year common carriers filed 44,109 concurrences and 49,820 powers of attorney, most of which represent efforts on the part of the carriers to establish through rates over joint routes.

The extent of the competitive struggle which has taken place since inauguration of the publication of tariffs under the act is shown by the record of protests. Up to February 1st of this year, 1,866 protests had been filed, from which 613 suspensions have resulted, the ICC declining to suspend in 360 instances, while 912 cases have been disposed of without the necessity of the commission either suspending or declining to suspend the protested rates.

From a traffic standpoint, the broadest and most significant result of regulation under the Act of 1935 is creation of a national rate structure serving the public throughout the United States, bringing to all shippers and all localities a broadened, integrated, and convenient service by motor truck, with widespread knowledge of rates and services available everywhere.

Truck owners and shippers have not been the only beneficiaries of Federal regulation. The men who actually drive the trucks also have gained better working conditions. During the last year rules governing hours of service were promulgated. These rules, in brief, prescribe that drivers of vehicles must have at least eight hours of rest after ten successive hours of driving and that the total hours on duty during any one week shall not exceed sixty. This, also, has served to spread employment.

The authority best qualified to estimate the value of regulation by the Motor Carrier Act is the agency of the Federal government charged with its administration — the Interstate Commerce Commission. In its latest annual report the commission, which has been regulating operation of the nation's railroads for more than half a century, summed up its opinion in the statement that motor carriers are

Stabilization of Motor Carrier Industry

"STABILIZATION of the motor carrier industry, while yet far from complete, has progressed to the point of commanding the fullest belief of the industry at large that it is entirely possible through the operation of the Act of 1935. Good practices are developing rapidly in every phase of the business. This comes about through uniform classifications of commodities, minimum tariffs, billing, collections, insurance requirements, and other methods prescribed by the law."

now provided with "a system of regulation which is, if anything, more comprehensive than that which has been provided for the railroads."

A major function of the commission is issuance of certificates of convenience and necessity, permits, and licenses. Its latest report showed that 93,364 applications for interstate motor truck operation had been filed, the bulk of them under the "grandfather clause." Of these 20,617 were granted, 42,670 denied, dismissed, or withdrawn, while 30,077 were pending. The fact that more than twice as many applications were thrown out as were accepted is proof of the diligence with which the commission attempts to establish or disprove the right of applicants to consideration as bona fide operators under provisions of the act. The result, of course, has been to weed out many whose operations were not of public convenience and necessity.

AN amendment to the Motor Carrier Act last year empowered the commission to grant temporary authority, not to exceed 180 days, to motor carriers "to enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need . . ." Under this amendment 206 requests were made, of which 37 were granted, 112 rejected, and 57 were pending at the time of the report.

While the commission, with its limited personnel, finds it difficult to police an industry so vast and far flung as the trucking industry, an impression, nevertheless, that the Motor Carrier Act has teeth has been made. Since the law became effective, the commission has prosecuted 470 violators, resulting in 272 convictions and the imposition of fines totaling $440,354.

Another function of the ICC is

supervision of insurance for the protection of the public. There are on file some 51,000 effective certificates of insurance received from approximately 35,000 motor carriers. The difference between the number of these certificates and the number of applications for operating authority granted or pending is due in part to the fact that motor carriers engaged in operations within contiguous municipalities and adjacent commercial zones are temporarily exempt from the insurance requirement.

In connection with insurance a correlative effect of the law has been opening of the door to further classification of motor carriers in the insurance field.

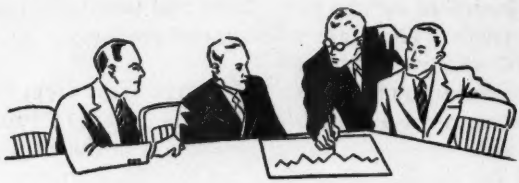
Already, in Florida, in workmen's compensation underwriting, "regulated carriers" have been set up as a special classification and will thereby enjoy lower insurance rates than unregulated carriers in view of their better experience. Insurance companies are recognizing the creation of a special group subject to the safety regulations of the ICC and as compliance becomes more widespread there will doubtless be opportunity for the acceptance nationally of a distinction between regulated and unregulated carriers for insurance purposes.

QUITE apart from everything else, the impact of Federal regulation has had a profound psychological effect upon the industry. After its wanderings in an economic wilderness, it now has a sense of unity, best expressed by the birth in every state of motor truck associations, banded together nationally in the American Trucking Associations, Inc. Through these media the industry is striving to coöperate fully with the Interstate Commerce Commission and such state commissions as have dominion over the operations of their members. These associations recognize that regulation is working toward prevention of excess truck transportation facilities and to place the industry upon a truly coöperative basis. Unity is also making the industry articulate in fostering good and fighting bad legislation affecting it. The states themselves, likewise, are increasingly impressed with the growing effectiveness of Federal regulation, and numerous steps toward emulating it have been taken by state legislatures and commissions having authority over public utilities.

Dictatorship for America

"WE have men and women, some of them native-born Americans of old lineage, who favor a dictatorship for this country and sympathize with the brutalitarian régimes abroad. These individuals, however, are mainly members of that lunatic fringe which is to be found even in the best-governed and most freedom-loving countries. . . . We must be eternally on guard to defend our liberties, not only as individuals but as citizens, against the brutal threats of totalitarianism either from the Right or the Left. We must ever remember that in all of those countries abroad where fascism today leers triumphant, the justification for the assault on the liberties of the people was to ward off another and equally objectionable ideology."

—HAROLD L. ICKES,
U. S. Secretary of the Interior.



Is New York Wasting Money On Its Power Authority?

The Chamber of Commerce of the state says so and demands the abolition of the agency as useless. The Authority says the Chamber is dominated by the private utility interests. The legislature continues its support of the Authority.

By JAMES BLAINE WALKER

THE 1939 session of the legislature of the state of New York ended on May 20, 1939, without taking action on the petition of the Chamber of Commerce of the State of New York, asking that the Power Authority of the State of New York be abolished, on the ground that it has done nothing and that its continuance would be "a waste of public funds." On the contrary it appropriated $50,000 for the continued support of the Authority for the year 1940.

The first resolution of the Chamber of Commerce was adopted January 5, 1939. It advocated the repeal of the Law of 1931 (Chap. 772). Subsequently, on March 13, 1939, the Chamber adopted another resolution, modifying its previous demand by eliminating from its request § 1 of the act, which provides that the water powers in the St. Lawrence river, within the boundaries of the state of New York "shall always remain inalienable to, and ownership, possession, and control thereof shall always be vested in, the people of the state."

The Power Authority countered by asserting that it has done all that was possible under adverse circumstances, and that the Chamber of Commerce is dominated by the privately owned electric power interests, which want to appropriate and exploit the natural water rights owned by the state of New York.

And what is the subject of the dispute? Why, the great St. Lawrence river, which forms the boundary separating New York state from the Dominion of Canada. The boundary line is the middle of the river. Canada owns and controls the northern half of the stream; the United States owns and controls the southern half. Hence the development of the vast waterway rests jointly with the two govern-

ments. Neither can act without the consent and coöperation of the other.

There are two ways in which the St. Lawrence river can be used to the benefit of both the United States and Canada:

The first to obtain the recognition of both governments was the project to construct a deep waterway from the Great Lakes to the Atlantic ocean, so that sea-going ships might ascend the river from the Atlantic coast to Quebec and Montreal, without breaking bulk of their cargoes. This was the dream of Champlain, the explorer, who descended the great river in canoes in 1607 and first visualized the possibility of a deep waterway from the Great Lakes to the ocean.

The second was the use of the rapids of the St. Lawrence river to develop hydroelectric power. These rapids form the northern boundary of the state of New York.

THE public interest in the potential water power was first proclaimed by Honorable Charles E. Hughes, governor of New York, in 1907, when he instructed the State Water Supply Commission "to devise plans for the progressive development of the water power of New York state, under state ownership and control for the *public use and benefit.*" This policy was maintained by his successors, Governor Benjamin B. Odell, Governor Alfred E. Smith, and Governor Franklin D. Roosevelt.

In 1931, the New York legislature, with the approval of Governor Franklin D. Roosevelt, enacted a law creating the Power Authority of the State of New York to arrange for the development of the water resources of the state. The act required "the preservation of power resources for the people," development of the St. Lawrence hydroelectric project on a public basis, and the creation of a public agency to carry out such purposes.

Under this statute Governor Franklin D. Roosevelt appointed five members of the Power Authority, with Frank P. Walsh as chairman. While the membership has slightly changed, Mr. Walsh functioned as chairman until his death on May 2, 1939.

This is the Authority which the Chamber of Commerce has attacked as a useless governmental agency, the continuation of which would be a "waste of public funds."

THE Chamber's first resolution adopted January 5, 1939, urged the governor and the legislature of the state of New York to repeal Chap. 772 of the Laws of 1931 (creating the Power Authority) on the ground that "appropriations to carry on this activity are a waste of public funds."

In a subsequent resolution the Chamber of Commerce, on March 13, 1939, while insisting on the abolition of the Power Authority, modified its previous resolution asking for the repeal of Chap. 772 of the Laws of 1931, by specially excluding § 1 of the act. This section provides that the water powers in the St. Lawrence river, within the boundaries of the state of New York, "shall always remain inalienable to, and ownership, possession, and control thereof shall always be vested in, the people of the state."

Its resolution of January 5, 1939, in which, as stated, the Chamber of Commerce asked the legislature to repeal the act creating the New York

Power Authority, on the ground "that the appropriations to carry on this activity are a waste of public funds, and that further appropriations to maintain the Authority should cease," together with a copy of the report of the Chamber's Committee on Internal Trade and Improvements, recommending such action, was sent to the governor and the members of the legislature.

This report recited the appropriations made by the state for the support of the Power Authority and its expenditures up to the year 1934, and stated that subsequent outlays had been around $100,000 a year. The report added:

> In all these years nothing has been accomplished along the lines contemplated in this act. Nothing can be done without a treaty with Canada, and the prospect of any accord with the Canadian government in this matter is not likely.

The report added:

> Since the Chamber is definitely opposed to the St. Lawrence waterway, the logic of the situation is that it must deprecate the expenditure of public money to produce a result to which it is opposed.

EVIDENTLY the Chamber of Commerce, on further consideration, decided that it had gone too far in advocating the repeal of the entire act creating the Authority, for on April 6, 1939, on a further report from the Committee on Internal Trade and Improvements, it adopted another resolution advocating the repeal of all sections of the act except § 1. This is the section which declares that the part of the St. Lawrence river within the boundaries of the state of New York "is hereby declared to be a natural resource of the state for the use and development of commerce and navigation in the interest of the people of this state and of the United States, and for the creation and development of hydroelectric power in the interest of the people of this state." It further states that such natural resources "shall always remain inalienable to, and ownership, possession, and control thereof shall always be vested in, the people of the state."

The report of the Committee on Internal Trade and Improvements, dated March 13, 1939, which was adopted by the Chamber of Commerce on April 6, 1939, makes the following points:

OTHER sections of Chap. 772 of the Laws of 1931 contemplate the undertaking by the state of competition with private business. The chamber "has for many years vigorously opposed the engagement of any government unit in private, competitive business, or the commitment of any government unit to such a possibility."

The committee "is doubtful whether

¶ "IN *November, 1937, the late Frank P. Walsh, chairman of the Power Authority, submitted to President Roosevelt an exhaustive report on the cost of hydroelectric power vs. electric power produced by steam operation. He found that the government water-power projects can deliver power within a radius of 200 miles for approximately 3.3 mills per kilowatt hour, as compared with steam power cost of 5.6 mills to 6.3 mills.*"

present engineering advances in the use of coal as compared with water power and expensive distribution systems have not reduced the value of such potential water powers as this almost to the vanishing point. . . . It is conceivable that at some future date the former advantages of hydroelectric power may return, owing to inventions and development of new processes."

For the first seven years "the output of the Power Authority has been seven pamphlets containing 1,380 pages of printed literature, largely of a propaganda sort. These 1,380 pages cost the people of the state around $1,000,000, or about $700 per page. It is doubtful if any of this material has had any effect upon the bill paid by the people of the state for electric service."

THE Power Authority immediately took up the challenge. Eighteen days after the Chamber of Commerce had taken its first action, namely on January 23, 1939, the Authority submitted to the legislature an interim report, in which it controverted the Chamber of Commerce charges, and accused the Chamber of being dominated by the private utility interests, which, it said, desired to utilize the hydroelectric power of the state in the St. Lawrence river for private profit.

The report further stated that the Chamber's Committee on Internal Trade and Improvements "contains representatives of the Carlisle-Machold power clique, which was notorious for its use of political influence to further private exploitation of the state's water power, and which is now associated with the House of Morgan in the United States Corporation."

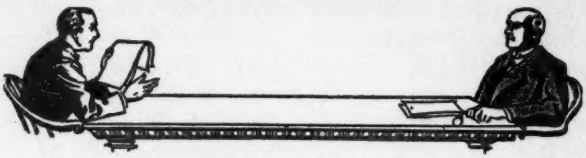
It is also charged that the membership of the Chamber of Commerce is "representative of the financial power which dominates the country's economic life." The request for the repeal of the Power Authority Act made by such interests was intended "to open the way to a renewed raid on the state's water power."

The report points out that the Power Authority Act is supported by the New York State Grange, the New York State League of Women Voters, the New York Consumers' Council, the Community Councils of the City of New York, and the Northern Federation of Chambers of Commerce.

Prospects for the negotiation of a treaty with Canada, the Power Authority thinks, are more hopeful than at any time since 1931.

THE report states that the Power Authority is constituted as the sole agency of the state, standing between the Niagara Hudson interests and the millions of horsepower of undeveloped water power in the state's border streams, which they hope to seize, once the way is cleared; that their objective is a reversal of the state's power policy, and the removal of an agency which has stood firmly and effectively in the way of the further seizure of the state's remaining water-power resources.

A large part of the report is devoted to stating names of persons connected with the Niagara Hudson Power Corporation and of the companies affiliated therewith. It says that Jonathan Bulkley, a member of the Chamber of Commerce committee, is an associate of Floyd L. Carlisle in the directorate of the St. Regis Paper Company,



Cost of Project

"THE (New York) Power Authority estimated that the construction of the project would require about seven years, and that the cost to the United States would be about $257,992,000, and to Canada about $142,976,000—the difference being accounted for by the amounts already expended by Canada on the Welland canal, etc."

"which, with its *alter egos,* St. Regis Securities Company, Eastern States Power Corporation, and Floyd L. Carlisle & Company, have served as key agencies in the Carlisle holding company combinations, culminating in the Niagara Hudson Power Corporation and the Morgan-Carlisle United Corporation, which dominates the power supply of the eastern seaboard."

Summing up, the report asserts that the Chamber of Commerce committee is thus dominated by the Niagara Hudson interests; that through ownership of the Frontier Corporation, these interests concentrate in their hands the private claims to the development of the people's St. Lawrence water-power resources.

The legislature adjourned without action on the request for repeal of the Power Authority Act made by the Chamber of Commerce.

IN a previous contribution to the FORTNIGHTLY, entitled "Champlain's Dream," I described conditions then existing in the age-long effort to bring about an agreement between the United States and the Dominion of Canada for the development of a deep-water seaway in the St. Lawrence river, in order to allow sea-going ships to navigate through that river to the Great Lakes. That was Champlain's dream, which resulted from a canoe trip he made in 1670—about 100 years before our Declaration of Independence. At the time there was no Dominion of Canada, and no United States of America—nothing but the vast North American continent.

It was a great dream—a prophetic dream, but impossible of fulfillment in his day and age. But it survived, like other great ideas, and more than 200 years later, after the American Revolution had established the United States of America and Great Britain had transformed the northern part of the continent into the Dominion of Canada, it was revived.

By itself the shipway would have been a comparatively simple problem, but in the nineteenth century electric

power was invented. At first this power was generated by steam, but soon it was found that it could be produced at less cost by utilizing natural water power. Then hydroelectric power was born.

Immediately the St. Lawrence river took on added importance. Its rapids, which formed the greater part of the boundary between Canada and the state of New York, offered possible millions of electric power if properly developed, and both Canada and the United States sought to take advantage of the opportunity to obtain cheap electric power.

AFTER years of discussion, after repeated investigations by engineers, and after several conferences with authorities of the Dominion of Canada, the Secretary of State of the United States, Honorable Henry L. Stimson, and Honorable William Duncan Herridge, Minister of Canada in the United States, on July 18, 1932, signed a treaty for the joint development by the two countries of the power resources of the St. Lawrence river and for the joint construction of the proposed shipway. The treaty came before the Senate of the United States for confirmation at its session in 1934, and was defeated by two votes.

That killed the matter for the time being, but friends of the project continued their work. On November 12, 1934, the Power Authority of the State of New York filed with the President of the United States a report on the cost of distribution of electricity adopted as a basis for the marketing of 1,100,000 horsepower of current from the St. Lawrence river.

The matter was again taken up by the State Department of the United States, which formulated a proposed new treaty with Canada, providing for the St. Lawrence shipway and for the development of hydroelectric power on both sides of the international boundary. On May 28, 1938, the Secretary of State transmitted a draft of the proposed treaty to Honorable Sir Herbert Marler, Minister of Canada. The proposed treaty provides for the creation of a Great Lakes-St. Lawrence Basin Commission of ten members, five of whom shall be appointed by each government, to prepare plans for and supervise construction of the works. Canada as yet has taken no action on this proposed treaty.

DURING the years 1931 and 1932 the Power Authority devoted itself to a study of the international situation. In its report for 1932 it gave the results of this investigation. Briefly it found:

The engineering plans embodied in the treaty of 1932 provided for the construction of two dams in the International Rapids section of the St. Lawrence river. The combined fall available at both dams would be 84.6 feet in summer and 76 feet in winter. At each dam there would be two power houses, one on each side of the international boundary. The total product would be about 2,200,000 horsepower, of which one-half would belong to the state of New York. New York's share would produce annually about 6,500,000,000 kilowatt hours of electricity, more than one-half of all current sold in New York state by the private utility companies.

The Power Authority estimated that the construction of the project

would require about seven years, and that the cost to the United States would be about $257,992,000, and to Canada about $142,976,000—the difference being accounted for by the amounts already expended by Canada on the Welland canal, etc.

IN its 1937 and previous reports, the Authority contended that private interests — notably the Aluminum Company of America, the Montreal Light, Heat & Power Company Consolidated, and the Niagara Hudson Power Corporation (with smaller concerns)—were opposing the efforts of the state of New York to secure public development of the power resources in the St. Lawrence and Niagara rivers. These companies, it said, were importing large amounts of electric energy from Canada and selling it at a profit in the state of New York.

It is unnecessary to itemize the work of the Power Authority during the succeeding years. Suffice it to say that it kept in close touch with developments in Washington and in Canada. It also made several investigations into the comparative costs of hydroelectric and steam-electric power production. In November, 1937, the late Frank P. Walsh, as chairman of the Power Authority, submitted to President Roosevelt an exhaustive report on the cost of hydroelectric power *v.* electric power produced by steam operation. He found that the government water-power projects can deliver power within a radius of 200 miles for approximately 3.3 mills per kilowatt hour, as compared with steam power cost of 5.6 mills to 6.3 mills. The President sent copies of it to Congressman Joseph J. Mansfield, chairman of the Rivers and Harbors Committee of the House of Representatives.

The Backward Progress of Modern Reform

"WE are living in a changing world. The hands of the clock have moved forward and cannot be turned back. Any advance truly in the public interest will be safeguarded. No right-thinking business man can reasonably object, for example, to fair and impartial government regulations for industry wherever they may be required in the public interest.

"But government by bureaus, the strait-jacketing of industry and daredevil financing have been steps backward, not forward. They have not advanced the well-being of the nation or of the people; they have retarded it. The remedies applied to a sick economy in the last six years have been more calculated to kill than to cure. They have left the patient more dead than alive."

—THOMAS M. GIRDLER,
Chairman, Republic Steel Corporation.

Wire and Wireless Communication

WASHINGTON was mildly surprised at the President's choice of James Lawrence Fly to succeed Chairman McNinch as head of the Federal Communications Commission. As far as Mr. Fly personally was concerned, the appointment was generally regarded as a fortunate choice. However, it had been thought likely that President Roosevelt would reserve this choice post for the political advantage of his administration's policies.

To this end it was expected in some quarters that the FCC chairmanship would be used either for capturing another potential presidential aspirant as a New Deal ally (as happened in the case of the recent McNutt appointment), or for the rewarding of some lame duck who went down to political defeat in the service of the New Deal. In the latter category practically all of the outstanding New Dealish lame ducks have been "taken care of," with the possible exception of Otha Wearin, former representative from Iowa, who failed to purge Senator Gillette last November.

But Mr. Fly's appointment is definitely not of the political category, although he is doubtless in sympathy with the New Deal policies. If anything, Mr. Fly's elevation could be put in the class of a "merit appointment," even though his previous service as general counsel for the TVA is not entirely analogous to his future duties as head of the FCC.

The new chairman is a mild-mannered Texan of only forty-one years of age who studied law at Harvard University, after serving three years as a junior Naval officer, following graduation from the Annapolis Naval Academy. Upon completion of his legal studies, Mr. Fly became a practicing member of the New York Bar and in 1929 was appointed a special assistant attorney general to take care of some antitrust prosecutions then being conducted under the Hoover administration.

It will thus be seen that, although politically a Democrat, Fly's service with the Federal government preceded the New Deal by several years. He has a number of friends and admirers even among private electric power executives with whom he came into professional conflict as a matter of course throughout the TVA litigation.

DURING his legal service, Fly was known more as an office lawyer than a court-room barrister, and the government's success in both of the major TVA constitutional tests was due in no small measure to Fly's generalship on the brief.

In the first of the TVA tests, the Ashwander Case, John Lord O'Brien, noted Republican attorney of Buffalo, N. Y., did the court-room work and both he and Fly tried strenuously to have the Supreme Court throw out the Ashwander Case on jurisdictional grounds. By a close margin the court refused to do this, however, and sustained the TVA on the merits (also by a narrow margin, and also on the carefully restricted

basis of Wilson dam operations at Muscle Shoals).

The second attack on TVA was a suit brought by the 18 private electric companies operating in the Tennessee valley. Here again Fly raised the jurisdictional defense to the effect that private utility companies as taxpayers or in any other capacity had no authority to question the validity of government operations, such as those of the TVA. This case was tried in the highest court for TVA by Stanley Reed, then solicitor general and now associate justice of the Supreme Court.

At this time the jurisdictional defense prevailed and as a result TVA is virtually immune from all further constitutional attack, by either taxpayers or competitive business enterprises. This far-reaching decision of the Supreme Court also throws a protecting cloak of judicial immunity around other Federal power projects and, for that matter, around any other business enterprise which the Federal government may now or hereafter decide to undertake.

It may well be because of this outstanding victory in the cause of the New Deal power policy that Fly was rewarded with such a choice appointment. However, it is generally expected that the administration stands to benefit from the installation of this able and efficient public servant in a post where ability and efficiency are keenly needed.

MR. Fly's personal views on various controversial points of administration policy are little known. He has made speeches rarely and his briefs have always carefully reflected the position of the board he was retained to counsel, rather than any obvious personal viewpoint. Even upon the rather numerous occasions when Fly, with other TVA officials, was called to testify before congressional bodies, his answers have been invariably cautious and moderate.

It cannot be fairly inferred from Fly's legal activity in behalf of public ownership of power, that he favors public ownership of utilities as a matter of policy. The consensus among Washington observers seems to be that Fly will carry out the prevailing policy of the administration effectively but not sensationally, and that he is even likely to adapt himself to any change of government policy in 1941 as effectively as he made the transition from the Hoover to the New Deal administration.

In short, Mr. Fly is pictured as a typically intelligent public servant, temperamentally disposed to carry out the will of the government in office whatever it might be. For this reason it is also expected that he will continue the efforts made by Chairman McNinch to remold the FCC staff along more harmonious lines. Fly's tact and ability to compromise may possibly make his efforts in this direction more successful, or at least less disturbing, than developments under his predecessor.

Coming back to the commission itself, it is likely that the administration has not given up hope of making some additional changes, notwithstanding the comparative calm which has settled over the commission's work during the last four months. This was seen in Chairman McNinch's parting statement that a new personnel and a new law would be required to bring the FCC "up to the maximum of public efficiency in the public interest." Chairman McNinch's views were made public in the form of his letter of resignation from the FCC chairmanship.

WHETHER efforts will be made at the next session of Congress to revive the agitation for a legislative overhauling of the Communications Act, or to investigate the FCC, probably will depend in large measure upon whether the commission can continue its present record-breaking spell of "good behavior."

In four months there has been none of the periodical outbursts of internal friction. The filing of the final report on the special telephone investigation was done with surprisingly unanimous action of the commission. Finally, the commission has been working hard on clearing its dockets, notwithstanding the hot summer months in Washington. On

July 27th the FCC announced that during the last eight months nearly 300 cases on the broadcasting docket had been disposed of, with only 23 cases awaiting immediate action.

If the commission should continue to go along at this pace, and in such a smooth fashion, until next January, there might be little disposition on the part of Congress to take up such a controversial item as an FCC investigation or reorganization during an election year.

That animosity still exists against the FCC in Congress is quite evident in the action taken by the House of Representatives in slashing the $210,000 FCC supplemental appropriation out of the Third Deficiency Bill. The commission was counting upon this additional fund to build up a special staff to expand its work in the field of telephone regulation.

However, the appropriation bill was considered just at the time when the Republican-conservative Democratic coalition had grabbed the congressional bit in its teeth and was charging towards adjournment with utter disregard for the administration measures being trampled upon.

With specific reference to the $210,000 FCC appropriation, it was apparent from the cross-examination of Commissioner Paul A. Walker before the House Appropriations Subcommittee that the economy minded members of the House feared the fund would be used to prolong the special telephone investigation and badger the telephone industry.

Representative Johnson, Democrat of West Virginia, was particularly critical about what he regarded as the FCC's inclination to fight the telephone companies for "every little thing," instead of resorting to reasonable compromise. He summed up the hostile attitude of the House subcommittee when he said to Commissioner Walker: "I would be willing to vote you money if you felt you would go out and make an honest effort to meet these people and adjust these matters in a businesslike way."

Commissioner Walker had suggested that the commission would have to have complete information about telephone companies at hand before it would be in a position to enter effective conferences with regulated industry. Representative Ludlow, Indiana Democrat, raised the point about complaints of telephone companies that the FCC requires "an interminable number of reports to be filled out," which imposes an economic expense on the companies which might be simplified or made less expensive. Representative Leavy, Democrat of Washington, defended the FCC request for additional funds, as did Clyde S. Bailey, executive secretary of the National Association of Railroad and Utilities Commissioners, at the hearings of the House subcommittee.

* * * *

THE Southwestern Bell Telephone Company was freed by a 3-judge Federal court on July 26th from interference of the Oklahoma Corporation Commission in raising telephone rates in 14 Oklahoma cities, affecting some 34,000 subscribers.

The court, Judges R. L. Williams, Edgar S. Vaught, and A. P. Murrah, temporarily enjoined the commission from halting the rate increases, but ordered the utility to make refunds to subscribers in the event the raises are later held invalid. The temporary injunction was effective August 1st.

In its ruling, the court accepted the special master's report prepared by Frank M. Bailey of Chickasha, who last June recommended approval of the proposed increases on the ground that the rates in the 14 cities were "unreasonably low, confiscatory, and unlawful."

Judge Williams, who acted as spokesman for the three judges in rendering the court's decision, ordered L. V. Reid, counsel for the commission, to submit in written form his statement in argument that the commission would be ready for its statewide rate hearing in two months.

The court refused the request of the telephone company counsel for a final injunction at this time.

* * * *

ALTHOUGH it is only two months old, the National Federation of Tele-

phone Workers already claims to represent 28 previously independent labor unions within the affiliates of the American Telephone and Telegraph Company. In round numbers it claims over 100,000 out of a potential membership of 250,000 and is giving the American Federation of Labor union of electricians considerable worry.

The AFL craft union has for a long time had control over handling installation and other technical work in the big cities and it is in this field that it is being challenged by the new telephone workers' organization.

For some time there have been differences between telephone company employees and labor unions, notably in New York city where the strong International Brotherhood of Electrical Workers (AFL) has insisted on doing a good bit of the installation work, notwithstanding jurisdictional protests of the United Telephone Organization — an independent federation of telephone workers. The New York Telephone Company has hesitated to take sides in the matter, fearing the striking power of IBEW's connection with the powerful Building Trades Council.

The UTO has apparently arrived at the conclusion that the way out of the impasse may lie through the National Labor Relations Board. At any rate, the UTO has filed charges with the NLRB against the New York Telephone Company for its allegedly unfair preferential treatment of IBEW. The independent union hopes that the case will result in its being awarded jurisdiction over all telephone installation work.

Among other long-range objectives of the national independent union were said to be the movement for the establishment of a Communications Industry Committee to coöperate with the Federal wage-hour administration, and for Federal legislation which would apply to the Communications Industry Committee mediation and jurisdiction principles.

* * * *

THE United States Independent Telephone Association won a sensational legislative victory in the closing hours of the recent congressional session, when the House of Representatives, following the lead of the Senate, passed without opposition or debate the special amendment to the wage-hour law for the relief of small rural telephone companies. The association's special committee had been working in Washington throughout the session, attempting to put through an exemption from the Fair Labor Standards Act of 1938 in favor of the small telephone exchanges.

While this special committee made the case of the little country telephone exchanges so clear to almost everyone in Washington that there was little opposition to some measure of relief, the telephone amendment became bogged down early in the session by other complications arising from attempts to amend the wage-hour law.

The House Labor Committee under Chairman Norton had placed the telephone exemption amendment into an "omnibus bill," including an exemption for white collar workers and agricultural workers, which caused opposition, especially from the farm bloc which wanted more liberal agricultural exemptions. Twice Chairman Norton attempted to have her bill considered by the House under a special rule limiting debate, and twice suffered defeat. The farm bloc, on the other hand, succeeded in obtaining a rule for the so-called Barden Bill (also containing telephone exemptions) only to have the House leadership ignore it in order to hasten adjournment.

It was during this eleventh-hour stalemate that the independent telephone group literally snatched victory from the jaws of defeat by getting both factions to consent to release the telephone exemption from both the conflicting wage-hour amendment bills and let it go through as a separate measure. As finally enacted the wage-hour law is amended so as to exempt from the Federal labor standards "any switchboard operator employed in a public telephone exchange which has less than 500 stations in it." The amendment does not state whether an annual average or "peak" count is to measure the 500 stations.

Financial News and Comment

By OWEN ELY

Utility Taxes Are More Than Double Common Dividends

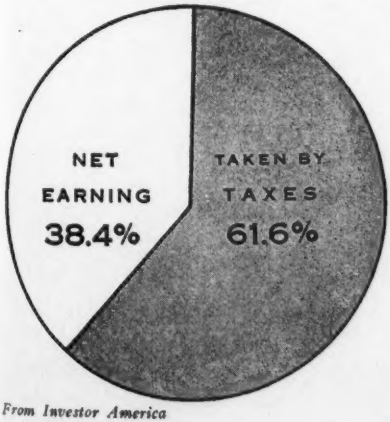
INVESTOR *America* recently compiled 1938 data on dividends, earnings, taxes, etc., for 163 large companies. In the table on page 224 we have selected certain ratios for the utility companies included in their list, and have compared the unweighted averages for these 15 utilities with the published average for 163 industrial, rail, and utility companies. It will be noted that taxes took 63 per cent of utility net earnings before taxes, or slightly more than the average for all companies of 61.6. The differences in the other figures are more striking. Thus utility taxes per share were $3.46 as compared with $2.73 for all companies (the latter figure would be lower if utilities were excluded). Taxes per common stockholder were $360 for the utility companies, against $283 for all companies; and taxes per utility employee ($1,006) were nearly double the average for all companies ($576).

The figures speak for themselves. The government takes nearly two-thirds of the stockholders' dollar and its corporate levy is twice that of the common stockholder, despite the fact that the government has a secure claim while the stockholder must gamble on his dividend.

As *Investor America* remarks:

> It is not just a lot of dry statistics. Almost every line tells a graphic story of the termite-like ravages of the tax collector . . . When extravagance and political corruption waste the billions of dollars collected from the people in taxes and result in a steadily mounting debt that threatens the solvency of the Federal government, there is cause for complaint on the part of those upon whom the burden falls most heavily. The millions of thrifty citizens whose savings form the backbone of industrial investment in this country are the ones most directly affected by these destructive taxes. Workers in industry also are vitally concerned, for unless business is permitted to operate on a basis that will permit a fair margin of profit, the system of free enterprise will break down and there will be fewer jobs and lower wages. This would further increase the number of dependents and cut off their support by drying up the sources of taxation from which relief funds now come. . . .
>
> Taxes of the corporations listed in the federation's tabulation have more than doubled in the last five or six years, and the total taxes of the nation have doubled since 1929. A further increase of 50 per cent in the revenues of the Federal government would be necessary to meet current expenses —that is, to balance the budget, with nothing left to apply toward reduction of the gross debt, which is now costing the taxpayers one billion dollars a year in interest alone, even at the present low interest rates paid by the government.

AMERICAN INDUSTRY'S INCOME DOLLAR



From Investor America

The utility companies have not only been persecuted in many ways by the

Federal government but have been burdened by a much heavier tax load than the rest of American industry. The sound, well-financed utility has had to suffer for the sins of a few holding company promoters during the previous decade. Despite the staggering tax burden under which the utilities labor, they are expected to reduce their rates to artificial "yardstick" levels as set by heavily subsidized, untaxed, and unprofitable public projects. At the same time they are exhorted to finance a huge expansion program to relieve unemployment. Such financing, despite the low level of utility earnings and stock prices, should (according to Federal philosophy) be accomplished largely by common stock issues, while at the same time a few hundred millions of accumulated preferred dividends should be quickly paid off or adjusted.

Flurry over Southern Bell Telephone Financing

DESPITE the storm of discussion aroused over the Southern Bell Telephone issue, the company's directors, after thorough discussion, decided to retain the services of Morgan, Stanley & Company as syndicate managers. The various last-minute protests forwarded to the SEC by several state commissions and a minority group of AT&T stockholders did not persuade the commission to take a definite stand at this time for or against competitive bidding.

Since the bonds were debentures and not a mortgage issue, the complaining state agencies had no direct jurisdiction over the financing. Also, the SEC itself had no complete jurisdiction over the bonds, since telephone companies are not included in the 1935 Utility Holding Company Act, and the 1933 Securities Act merely requires registration and disclosure of commissions, underwriting discounts, etc. While the SEC has, in the past, indicated its sympathy with competitive bidding, it had in the present case no powers to prescribe the methods of award, commissions, or underwriting discounts, which presumably accounts for its failure to intervene.

While this difficulty was satisfactorily

UTILITY TAXES *VERSUS* EARNINGS AND DIVIDENDS

	Per Cent of Taxes to Net Earnings before Taxes	*1938 Taxes per Common Share*	*1938 Dividends per Common Share*	*1938 Taxes per Common Stockholder*	*1938 Taxes per Employee*
American Telephone & Tel. Co.	48.7	$7.54	$9.00	$228	$573
American Water Works & Elec. Co.	77.0	2.99	None	495	787
Cities Service Company	75.5	4.84	None	35	748
Columbia Gas & Elec. Corp.	52.0	0.91	None	187	762
Consolidated Edison of N. Y.	59.5	4.48	2.00	536	1,338
Detroit Edison Company	49.5	6.04	6.00	523	1,173
Middle West Corporation*	75.6	2.51	None	241	998
Niagara Hudson Power Corp.	67.9	1.59	0.25	200	1,372
North American Company*	54.8	2.14	1.20	312	964
Pacific Gas & Elec. Co.	42.2	2.75	2.00	475	1,358
Public Service Corp. of N. J.*	50.3	4.18	2.20	681	1,126
Southern Calif. Edison Co.	39.4	2.39	1.75	165	1,730
United Gas Improvement Co.	36.5	0.66	1.00	144	1,180
United Light & Power Co.	78.4	3.23	None	974	855
Western Union Telegraph Co.	138.8	5.61	None	191	132
Average per utility company	63.1	3.46	1.69	360	1,006
Average for 163 industrial, rail, and utility companies	61.6	2.73	1.33	283	576

*Includes subsidiaries.

disposed of, the Bell issue was unfortunately timed. It followed closely on the heels of the "sticky" Shell Union Oil issue—$85,000,000 debenture 2½s of 1954 offered at 97¾. As surmised by this department a fortnight ago, the 2½ per cent coupon rate on this huge industrial issue aroused misgivings among institutional buyers, and the bonds dropped about two points at the closing of the syndicate. This disturbance in the high-grade bond market, together with the controversy over competitive bidding and a rumored mark-up in price, handicapped the Southern Bell issue. While it did not "go out of the window," it had better luck than the Shell Union issue. Both offerings were on about the same yield basis, a little under 2.70 per cent; Southern Bell's advantage of a higher coupon and presumably greater institutional interest were partially offset by a much longer maturity.

W. Scott Hall, representing a small group of American Telephone stockholders who criticised award of the issue to Morgan, Stanley & Company, claimed that in the original registration statement the offering price of the issue was "not in excess of 106," on which basis he estimated that the company would have netted only about 102½; whereas, after the agitation by himself and others, the retail price was increased to 107½ and the company netted 106. A spokesman for Morgan, Stanley declared that Mr. Hall's conclusions were erroneous, but *The New York Times* stated:

> . . . because of the controversy stirred up by proponents of competitive bidding, the Morgan, Stanley group undoubtedly "went the limit" on the matter of price to the company, and to top that even cut the "spread" on the issue to 1½ points. This marks the first time, at least since the enactment of the Securities Act, that telephone financing has been done on less than a 2-point commission basis.

"Biggest Ever" Electric Power Issue Registered

PENNSYLVANIA Power & Light Company's long-delayed $132,000,000 financing plans have finally matured, $95,000,000 first 3½ of 1969 and $28,500,000 debenture 4½s of 1974 being registered July 20th, and a bank loan of $8,500,000 for ten years at 2⅝ per cent also arranged.

The bond issue, which is principally for refunding purposes, will be underwritten by a syndicate headed by Smith, Barney and Company. This offering will, it is thought, be the largest single financing operation on record for a power and light company.

The company is controlled by Lehigh Power Securities Corporation, which in turn is controlled by National Power & Light Company, affiliated with the Electric Bond and Share group. It is one of the largest systems in Pennsylvania, supplying electricity and gas to a large part of the state east of the Susquehanna river and north of the Philadelphia metropolitan district. The population served is estimated at 1,683,000, and the 700 communities served include such industrial centers as Bethlehem, Allentown, Wilkes-Barre, Harrisburg, etc. The company covered its interest charges in 1939 2.28 times.

The $95,000,000 first mortgage bonds to be offered represent a reduction of $26,000,000 from the existing $121,000,000 first 4½s. The bank loan is to be paid off at the rate of $850,000 a year for the next ten years, and after it is paid off the 4½ per cent debentures will carry a sinking fund of $850,000 a year, eventually retiring about 75 per cent of the issue.

The financing will permit retirement of $29,000,000 bonds now held by Lehigh Power Securities Corporation, thus facilitating dissolution of Lehigh and marking the beginning of a corporate simplification plan by the huge Electric Bond and Share system.

National Power & Light Company maintains a very strong cash position, and the proceeds from the sale of its properties to the TVA are being used to reduce funded debt. However, system properties are scattered, presenting difficulties under § 11 of the Holding Company Act.

THE company's properties near TVA, now being disposed of, formerly furnished about 15 per cent of total revenues and about the same percentage of net earnings available to the parent company. Remaining system properties now contribute about as follows:

	Per Cent of Gross Revenues	*Per Cent of Net Available to Parent Company*
Pennsylvania Power & Light	56	50
Houston Lighting & Power	16	33
Carolina Power & Light	17	15
Birmingham Electric	11	2
	100	100

Rate policies of the public utility commission in Pennsylvania, formerly dominated by the Democratic state administration, are an important factor in determining future system earnings, rates in that state being somewhat above the national average. Trends of industrial activity in Birmingham and the Carolinas will influence the profits of those properties. Further sales gains seem assured in Houston due to continued building and industrial growth.

The position of National Power & Light preferred should be strengthened by the pending financing. It is currently selling around 90 to yield about 6.6 per cent. The common has continued to pay dividends over the past decade, the current 60-cent rate yielding about 6.6 per cent, at the current price of 9.

First Dissolution of a Top Holding Company

AN offering of 362,588 shares of common stock of Washington Gas Light Company at around $31 a share, expected this month, will be used to effect dissolution of the Washington & Suburban Companies, a Massachusetts common law trust which controls Washington Gas and also New York & Richmond Gas Company of Staten Island. The offering will not only be the largest common stock flotation of recent years, but will also constitute the first liquidation of a top utility holding company since passage of the Holding Company Act about four years ago. Four large banks (Chase and Public National in New York, and Continental Illinois and Harris Trust in Chicago), together with the RFC, are interested in the offering because they own 70,000 preferred and 6,000 common shares (beneficial interest) of Washington & Suburban, acquired in connection with loans or advances to Central Public Utilities Corporation or affiliates. They also hold notes of Washington & Suburban against which there are pledged 327,588 shares of Washington Gas Light, which are included in the forthcoming offering.

In exchange for 35,000 shares of Washington Gas Light common, Washington & Suburban is turning over two other properties, the Washington Suburban Gas Company of Hyattsville, Md., and Alexandria Gas Company of Virginia, to Washington Gas Light, thereby combining these units into one integrated system. The top holding company is also expected to distribute its equity in New York & Richmond Gas, following which it will be dissolved.

In business for more than ninety years, Washington Gas Light Company is one of the six oldest gas companies in the country. Growth of the company and its subsidiaries has been steadily upward since it first delivered gas to its consumers in 1848. Since 1918 there has been only one year (1921) in which the volume of gas sold was less than in the preceding year, and since 1918 there have been only three years (1922, 1932, and 1933) in which the gross revenues from the sale of gas were less than those of the preceding year.

The company's rates are fixed under the so-called "Washington plan" initiated in 1935, one of the first and best known of the various "sliding-scale" rate schedules. Under this plan rates are adjusted so as to provide in effect a basic return of 6½ per cent. Rates were reduced in 1936 and 1938, and while they are now substantially below the national average

for manufactured gas companies (the company since 1931 has distributed a mixture of manufactured and natural gas), another reduction is expected September 1st.

The company has paid dividends continuously for seventy-three years, the current annual rate being $1.50. Earnings on the common stock for the twelve months to May 31st last, adjusted so as to eliminate nonrecurring savings resulting from a reduction of Federal income taxes in 1938, and to include earnings of two subsidiaries being acquired from Washington & Suburban Companies, would amount to $2.55 on the 450,000 outstanding shares. On the same basis, earnings for the calendar year 1938 would have been $1.98 a share.

Many New Financing Plans

UTILITY financing continued active in July although the estimated total for the month, about $97,000,000, was considerably below the $173,000,000 achieved in June. The latter figure included $13,000,000 classed as new financing, while July's total of new capital is estimated at $25,000,000 (the Southern Bell issues). Of the latter amount, however, $17,000,000 represents outlays already made for plant construction and improvements, through advances from the parent company, American Telephone and Telegraph.

Important offerings in the latter half of July included the following: $5,650,000 California Water & Telephone first 4s of 1969 at 103¼, and 28,000 shares of 6 per cent preferred stock at $25 per share; $22,250,000 Southern Bell Telephone & Telegraph Company debenture 3s of 1979 at 107½, together with $2,275,000 additional debentures sold to the Bankers Trust Company as trustee of the Bell System pension funds; 297,077 shares of West Penn Power Company 4½ per cent preferred stock at 110 (of which 91 per cent was taken in exchange for old preferred); and $26,500,000 Kansas Power and Light 3¼s at 108½.

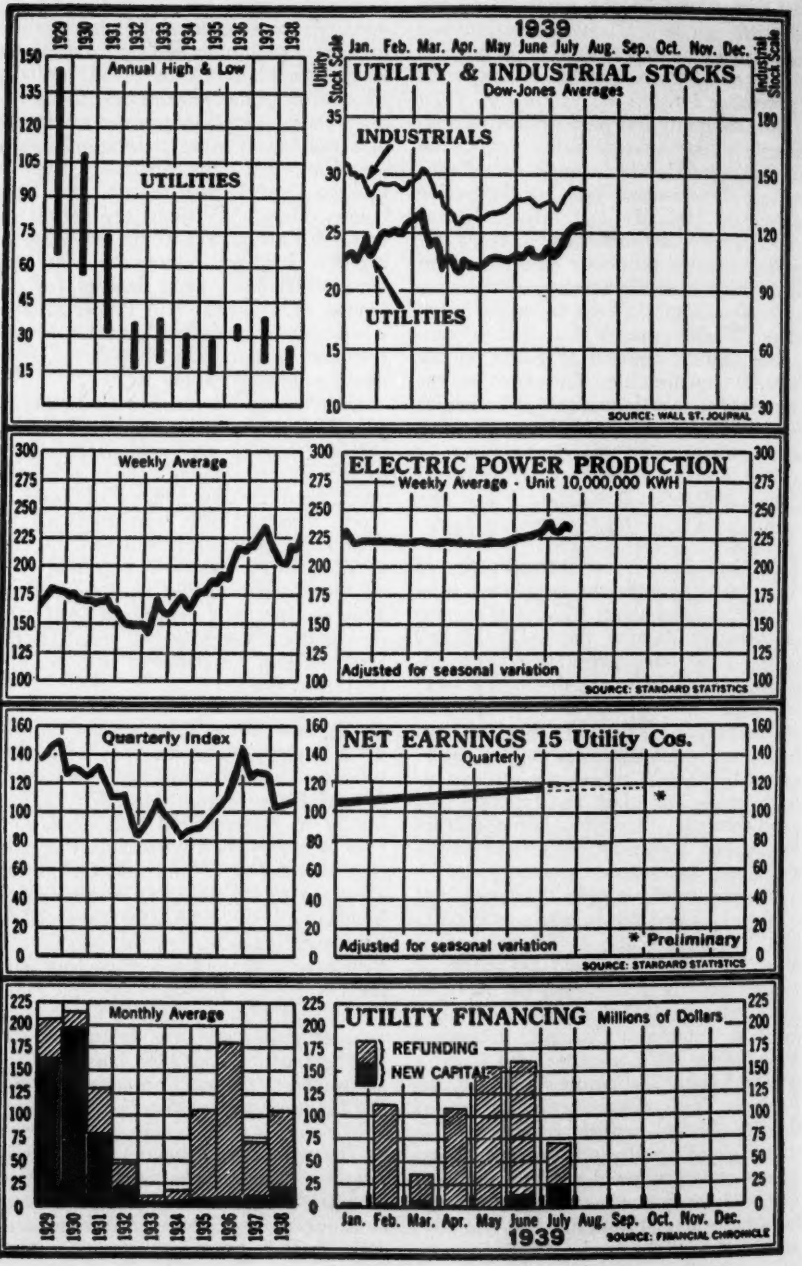
The *Kansas Power and Light Company* 3¼s were successfully underwritten by a large group headed by First Boston Corporation and Dillon Read, and distributed by some 480 dealers. Subscription books were closed in the afternoon, and the bonds were then quoted at a premium. The Southern Bell issue was less successful, for reasons described below. Meanwhile plans are going forward for a huge amount of assorted utility refunding, mainly by large systems which have been delayed for one reason or another; and unless another war scare or business slump intervenes, the next few months should register a heavy volume of financing.

Oklahoma Natural Gas Company on July 28th registered with the SEC $17,000,000 first 3¼s of 1955, 58,000 shares of $5.50 convertible prior preferred stock, and 290,000 shares of common stock, reserved for conversion of the preferred. The preferred will be convertible into 5 shares of common.

Ohio Central Light & Power Company on July 21st registered $4,100,000 first 4s due 1964, $500,000 serial 3½s due 1940-44, and 2,200 shares of 6 per cent preferred stock.

MIDDLE West Corporation subsidiaries are considering a refunding program which may aggregate some $90,000,000 and save about $750,000 annually in interest and dividends. The first step was the registration July 28th by *Central Power and Light Company* (Texas) of $25,000,000 first mortgage bonds due 1969 and $7,000,000 serial debentures. *Southwestern Gas and Electric Company* contemplates refunding $16,000,000 4 per cent bonds and $8,834,600 7 per cent preferred stock later in the year if conditions are favorable. Refunding of $26,553,000 bonds of the *Kentucky Utilities Company* and $7,807,000 of bonds of *Northwestern Public Service Company* is also likely.

There has been some delay in the *New England Power Company* offering of $9,650,000 30-year first mortgage bonds, in connection with the acquisition of the Bellows Falls property.


1939
Annual High & Low
UTILITIES
UTILITY & INDUSTRIAL STOCKS
Dow-Jones Averages
INDUSTRIALS
UTILITIES
Utility Stock Scale
Industrial Stock Scale
Jan. Feb. Mar. Apr. May June July Aug. Sep. Oct. Nov. Dec.
SOURCE: WALL ST. JOURNAL
Weekly Average
ELECTRIC POWER PRODUCTION
Weekly Average - Unit 10,000,000 KWH
Adjusted for seasonal variation
SOURCE: STANDARD STATISTICS
Quarterly Index
NET EARNINGS 15 Utility Cos.
Quarterly
Adjusted for seasonal variation
* Preliminary
SOURCE: STANDARD STATISTICS
Monthly Average
UTILITY FINANCING Millions of Dollars
REFUNDING
NEW CAPITAL
1929 1930 1931 1932 1933 1934 1935 1936 1937 1938
Jan. Feb. Mar. Apr. May June July Aug. Sep. Oct. Nov. Dec.
1939
SOURCE: FINANCIAL CHRONICLE

OUT OF THE MAIL BAG

The Smyth *v.* Ames Controversy

PUBLIC UTILITIES FORTNIGHTLY of May 11th, at page 610, contains a brief article concerning the concurring opinion of Mr. Justice Frankfurter in the case of Driscoll *v.* Edison Light & P. Co. (decided April 17, 1939) [28 P.U.R.(N.S.) 65, 59 S. Ct. 715], and the criticism therein made of the decision and opinion in Smyth *v.* Ames (1898) 169 U. S. 466. The opinion of the court in Driscoll *v.* Edison Light & P. Co., written by Mr. Justice Reed, made no reference to the older case, but the author of the concurring opinion seemed to believe that the ruling in the Driscoll Case finally rested upon the decision of Smyth *v.* Ames. Now that Mr. Justice Frankfurter is a member of our highest court, his opinion will tend to revive the controversy which has arisen so often over Smyth *v.* Ames.

The core of the opinion in Smyth *v.* Ames was that constitutional protection against confiscation extended not alone to the physical thing or things which the railroad owned, but to the right to have and to enjoy the use of that property for its benefit, advantage, and profit, and that it was the obligation and duty of the courts to restrain such confiscation when attempted by state laws or by administrative action pursuant thereto.

This holding marks out the line of cleavage between the two schools of thought. On the right of the line are all those who believe that the right of a public utility to own and hold property without danger of confiscation is of no great account unless that right comprehends also the right to use the property for the benefit and profit of the owner. On the left of the line are all those who think and say that the state has the power, and may properly exercise it, to compel the utility owner to devote the property to a public use, even though just compensation for that use is denied or withheld. This statement of the dispute reduces the arguments on each side of the line to the ultimate essentials. It is, nevertheless, a fair and correct analysis.

THE viewpoint of Mr. Justice Frankfurter is indicated quite clearly by his approbation of the dissenting opinion of Judge Bradley in Chicago M. & St. P. R. Co. *v.* Minnesota (1890) 134 U. S. 418, 461. Judge Bradley says that the Federal court is without the power and without the right to give judgment against the appropriation of the use of railroad property even though compensation be not made for the use so appropriated.

In Smyth *v.* Ames, the court was of opinion that the value of the use was dependent, at least in a measure, upon the fair value of the property devoted to the use, but it laid down no specific formula for finding fair value. It did list certain considerations of which account might or should be taken, but it cautioned also that there would be other considerations; and of all considerations alike, it declared that each "is to be given such weight as may be just and right in each case." In other words, fair value is something to be established and determined by the trial court upon the familiar principle that all relevant facts are to be taken into account, and the determination is to be made according to the persuasiveness of the facts established. Certainly, there is nothing strange in that principle, nor in its application.

All things change with time, and some of the criteria suggested by Judge Blatchford in his opinion are doubtless now of less use or value than they seemed to be when he wrote, but others of them are just as useful, and as valuable, as they were when he set them down in 1898. He did not assert that they were immutable. So long as Smyth *v.* Ames stands as the law, it should be, and it is, the obligation of a trial court in a public utility valuation suit to settle and find the facts. The burden of meeting that obligation is no different in principle than the burden which falls upon a court in any other case in which questions of fact must be decided upon voluminous evidence, and in which careful study must resolve apparent confusions and contradictions.

Very truly yours,
—HENRY W. KILLEEN.

¶ "TODAY *the natural gas industry can borrow money at less cost than at any time in its history. The yield on some of the industry's bonds is very comparable to that for government issues if the tax-free feature of government bonds is considered.*"

—FRANK R. DENTON,
President, Mellon Securities Corporation.

What Others Think

The Government As a Builder And Doctor

So much has been said and written during the past six years of the New Deal about public ownership and operation in the field of public utility service —especially electric power service—that relatively little attention has been paid to Uncle Sam's steady progress into the field of housing and his threatened dip into the sphere of medicine.

Housing, traditionally a field reserved for private development, in the United States at least, has been invaded by the Federal government step by step, according to a recent discussion of this subject by Leigh S. Plummer in *The Wall Street Journal*. This writer predicts that if Uncle Sam gets any deeper into the business, he will soon find that mortgages can become just as frozen when guaranteed by the government as when financed by ordinary means. Mr. Plummer stated:

> These steps have included the Home Owners' Loan Corporation (established in the latter part of the Hoover administration but brought to full flower later), an agency designed to meet the emergency of depression evictions and to provide refinancing for distressed home owners; the Public Works Administration housing program, essentially a scheme to provide employment in the building trades which has subsequently been transformed into a slum clearance measure centered in the U. S. Housing Authority; the Federal Housing Administration which, by insuring mortgages, is supposed to encourage the flow of private capital into large- and small-scale construction; and the Resettlement Administration, now the Farm Security Administration, whose purpose has been to move distressed farmers from nonproductive or drought stricken land to farms where they can earn a living and, over a period of forty years, buy the land.

The Wall Street Journal series by Mr. Plummer was restricted primarily to the second of these steps, the PWA housing program, and to that of its successor, the USHA. The ostensible purpose of this program was to provide low-cost housing for low-income groups in northern areas. Mr. Plummer stated:

> Entry of the Federal government into the low-cost housing field must be considered, at the outset, as part of a world-wide movement long noticeable in the Scandinavian countries, Holland, England, and elsewhere toward ameliorating the plight of low-income groups. This movement, in turn, is only one phase of a broader socio-economic current which has included in its manifestations the development of the co-öperatives of the Scandinavian countries and England, wider acceptance of collective bargaining, and a more active rôle for labor, and assumption by central governments of powers which in their totality narrow the field for private business.
>
> Spurred by depression unrest, the various phases of this current came to a head in this country with advent of the Roosevelt administration in 1933. During the prosperous years of the 20's the United States had made progress in its own way toward improving the lot of its citizens, but the 1929 crash and the depression years which followed found the country prepared to try methods already in operation abroad. Since then this country has been attempting, in a few short years, to implement this broad range of ideas worked out in Europe over a much longer period. Much confusion and many false starts have resulted—nowhere to a greater extent than in housing of the lower income groups in our cities.
>
> Socially minded persons, shocked by conditions in the slums of many cities, long had sought Federal aid in correcting this situation, but oddly enough the first active intervention of the Federal government was by the backdoor—namely, the providing of employment.

The PWA, which served as a vehicle for Federal housing between 1933 and 1937, sponsored the building of 51 slum clearance and low-rent projects in 37 cities and in Puerto Rico and the Virgin Islands. Nathan Straus, administrator of the USHA, in a statement be-

fore the House Committee on Banking and Currency last June, valued these projects at $123,000,000, and placed their housing capacity at 21,000 families or 70,000 persons.

Mr. Plummer conceded that because of the speed with which PWA projects are forced through, and because of the centralized Washington control provided, the PWA housing projects did not represent a fair standard by which to judge the present USHA program. However, the PWA projects still represent the major part of the Federal government's completed activity in that field and for that reason invite analysis of their economic progress to date.

The USHA was set up on quite different terms than the old PWA housing division. The former is essentially a financing and advisory board, whose operations are decentralized through local housing authorities through which the Federal government makes loans and pays annual rent subsidies. The act authorizes USHA to make loans up to $800,000,000 to local authorities for the construction of public housing projects, and to pay annual contributions so that rents would be within the means of families in slums. This government corporation raises its funds through the sale of bonds guaranteed by the Federal government. Mr. Plummer continued:

> The USHA raises its funds through sale of bonds guaranteed by the Federal government and can loan up to 90 per cent of a project's cost, the local authority being required to raise the remaining 10 per cent. The local authority issues its bonds to cover cost of the project, a maximum of 90 per cent going to the USHA to secure its loan, and at least 10 per cent being sold elsewhere. These local authority bonds are in turn secured by the USHA's contract to make annual contributions to reduce rents on the project.
>
> Administrator Straus insists that these annual payments, which run for sixty years, the estimated life of the projects, are rent contributions and are not directed toward debt service. Technically he is correct, although in practice the rent paid by the tenant will about cover maintenance and operating costs, while the annual Federal contributions will about cover debt service.
>
> Thus, in the first few years at least, the stream of payments will be about as follows: the tenant will pay a rental sufficient to cover maintenance and operation; the USHA will pay a contribution to the local authority sufficient to service the debt for that year; the local authority will use these funds to service its bonds, 90 per cent of which are held by the USHA and 10 per cent by private investors; the USHA in turn will use the money it gets back to service its debt.
>
> Effect of this set-up is twofold: first, the USHA bonds sold do not represent a cost to the government in any one year and are not added to the public debt; and, second, the amount of the annual contributions fixed in the present law at $28,000,000 and in proposed amendments at $73,000,000 are the gross annual costs. Actually, the government makes a profit on the loan transaction since it can borrow its money at 1⅛ per cent and makes loans to local authorities at from 3 to 3¼ per cent, this profit being sufficient to reduce proposed gross annual costs from $73,000,000 to a net of around $53,000,000.

At present only $650,000,000 of the $800,000,000 authorized has been loaned or earmarked for loans. Thus far the USHA program (as distinguished from its predecessor, PWA) has resulted in completion of five low-rent housing projects: two in Buffalo and one each in New York city, Jacksonville, and Austin, Tex. The low-rent housing movement has progressed to the stage where the Federal government in coöperation with the Federal Housing Authority is actually taking an active rôle in providing housing for its own sake rather than as a step in providing employment. Mr. Plummer concluded:

> There remains to be considered the broad economic effect of such a program. Essentially the USHA is going, through the sale of its bonds, into the capital markets and securing funds which have been saved by individuals and putting them to use in building government-sponsored houses. That fact represents a major departure from practices of the pre-1929 economy. These projects are clearly not self-liquidating since they depend on annual government contributions to help cover annual operating and debt service charges. Such a scheme goes even further than the President's recently announced program of self-liquidating public works. It smacks of the even more advanced ideas of economists who believe that private industry cannot provide sufficient outlet to absorb the nation's savings. Thus, the low-rent housing program holds possibilities of entering a third phase in which it will be used deliberately to shore

up the demand for capital, either through sale by local housing authorities of their bonds, secured by USHA annual contribution contracts for 10 per cent or more of total project costs, or by sale of USHA bonds which are in turn secured by local housing authority bonds and the annual contribution contracts.

Alleged adverse effect of "government competition in the realty field" was one of the subjects taken up at the recent convention of the Real Estate Association of the State of New York. At the convention's annual dinner at Bolton Landing, N. Y., on June 23rd, E. L. Ostendorf of Cleveland, president of the National Association of Real Estate Boards, criticized the United States Housing Authority's program for low-rent housing and suggested that this agency should confine its efforts to aiding in the assembly of land and the demolition of old buildings. Mr. Ostendorf stated:

> The development of a sound method of coping with slums and blight and the rehousing of residents of such areas is one of the major realty problems before the nation, but the projects so far built by the government are neither clearing slums nor producing houses for the lowest-income group.
>
> The USHA now has available $800,000,000 which eventually will mean the direct building by the government of 300,000 family units, and most of that, under present policies, will be in competition with private initiative. It now seeks an additional $800,000,000.
>
> We subscribe to the thesis that decent housing for all our citizens should be a central national objective, but we hold that the government itself should not build any structures nor act as a landlord to its citizens.

Mr. Ostendorf called for "wise" direction of the various Federal agencies dealing with mortgages and realty matters and for the coöperation of all branches of the industry to see that these agencies do not develop into a "deadly bureaucracy."

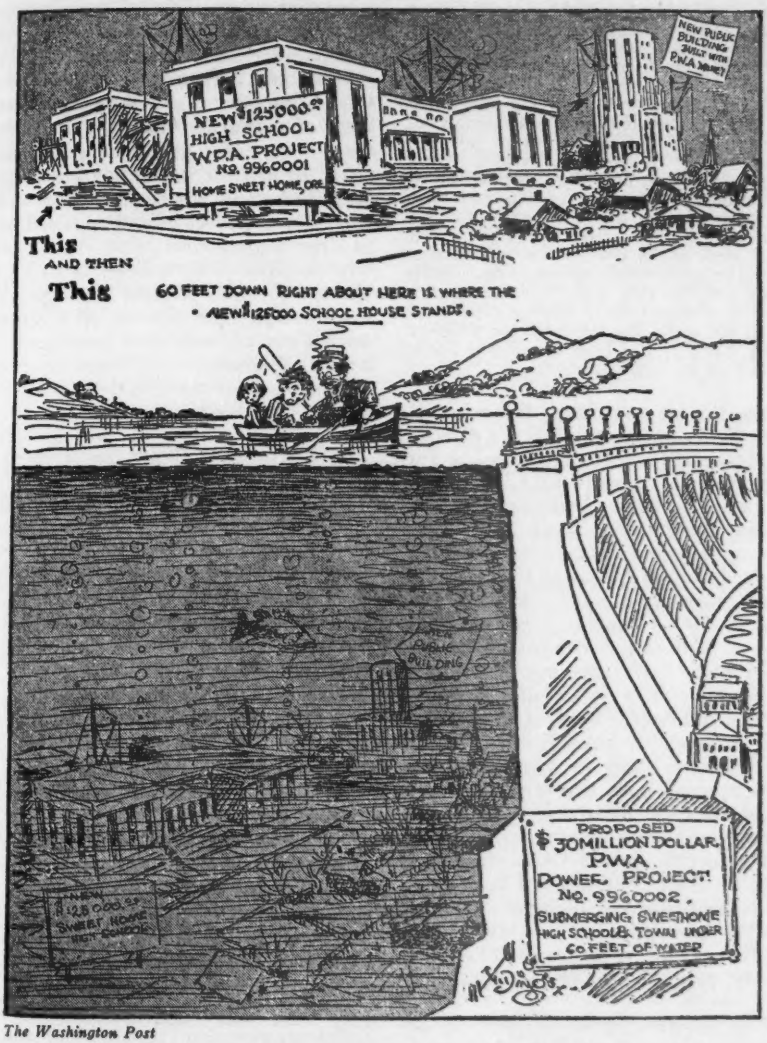
He urged advancement of the program of the National Real Estate Foundation and of education in the real estate field to develop sounder mortgage, management, and appraisal practices, and to establish a research system which would chart the trends of the market and the prospective growth of cities.

IN the field of public medicine the Federal government has not, as yet, officially ventured beyond the point of releasing data which generally encourage the idea that making medical assistance available to the general public through a system of public control is a matter of social progress. It is this attitude which gave rise to the introduction of Senator Wagner's national health bill which has the doctors of the nation so upset, even though little was done about it at the recent session of Congress.

But few people seem to know that there is now going on in the city of Washington an experiment in "coöperative medical protection" in which from 1,400 to 3,600 employees of the government are or have been enrolled. This is known as the Group Health Association of Washington, D. C., whose existence gave the Justice Department the opportunity to spring its recent sensational criminal prosecution against the American Medical Association on grounds of violating the antitrust law.

This Group Health Association also has been serving as a guinea pig for members of the national administration who have been behind the so-called national health program. Many of them favor compulsory health insurance and now after two years the guinea pig has had to receive transfusion from the government and a foundation's funds to keep alive.

The interesting story of this little known guinea pig now residing in Washington is told by the first medical director, Dr. Henry Rolf Brown, in the summer issue of *America's Future*. Dr. Brown assumed his post because he believed (and still believes) in the principle of group health or medical aid to people of low income. He wanted to find out if it really could be worked on a sound and self-supporting basis. His idea was that the Washington organization would be a coöperative venture, independent of the Federal government. Instead of a private organization, how-



The Washington Post

AIN'T PLANNED ECONOMY WONDERFUL?

ever, Dr. Brown found what was in effect an adjunct of the Home Owners' Loan Corporation. He resigned because lay control invaded the field of medical direction. Dr. Brown stated:

> After several conferences with HOLC officials, I accepted their offer to become medical director of the Group Health Association. Shortly before my retirement I represented the Veterans Association at the June meeting of the AMA in Atlantic City. Then I returned to Washington and assumed my new duties with Group Health. These duties entailed organization of staff, both lay and professional, and securing necessary equipment for the contemplated clinic. As I was not a member of the District of Columbia Medical Association, I

was not required to submit any contract that I had with GHA. For the medical staff I applied to numerous doctors of my acquaintance and to medical exchanges, principally in Chicago, for men qualified and eligible. I interviewed many high-class men of superior qualifications. A number of them seemed willing to accept positions with Group Health. They visited Washington and went over the situation, whereupon most of them after three or four days' figuring declined my offers on the ground that they did not believe that with the dues that were to be charged the organization could be an economic success. Consequently they felt that they could not give up their present positions for a dubious experiment. I do not recall that any of these prospects said that they had been approached by the AMA or its representatives.

DR. Brown soon found that while R. R. Zimmerman, HOLC's director of personnel was not a trustee, he and Ormond E. Loomis, HOLC's assistant chairman, were the moving spirits of the Group Health Association. Any policy they agreed upon was certain of adoption by the board of trustees. Publicity and promotion of the enterprise were handled by HOLC publicity men on their own as well as government time. And when it was found that, notwithstanding an intensive drive, it was difficult to get government employees to sign up voluntarily for membership, solicitors were advised to pass along to government employees broad hints that it would be desirable if they joined up. This was to be done, of course, without any coercion, and evidently it was done effectively, since the final drive resulted in about 70 per cent of employees joining the Group Health Association at monthly dues of $2.20 per individual and $3.30 per family, regardless of the family's number.

This supposedly self-supporting organization started out with a backing of a $40,000 "loan" from HOLC to finance beginnings of Group Health. In several other ways Group Health was allowed to enjoy the petty perquisites of a public status. For example, Group Health purchases had the privilege of government discount through the use of HOLC's purchasing division; telegrams, clerk hire, and long-distance telephone items were charged to HOLC. The installation of X-ray apparatus and interior decorations were performed by HOLC electricians and carpenters on government time, using government materials. Even some of the earlier printing and mailing were done under government privilege.

Dr. Brown felt that all this was irregular. He became further disturbed when the HOLC liaison officials advised him to drop negotiations with Washington city hospitals for facilities to care for Group Health patrons through the association's medical staff. At this point laymen entered into the situation and as a result Washington city hospitals denied admission to Group Health doctors. Dr. Brown continued:

When I began Group Health duties, I had complete charge of the medical department. Business and financial matters were in the hands of the secretary, Mr. Berry, in coöperation with the medical director. But gradually Mr. Berry and the medical director were shorn of all authority and became rubber stamps under direction of lay officials. They made all rules and regulations. They fixed all policies. Staff doctors were merely hired hands.

The medical staff resented the encroaching lay control. Early in the game Drs. Allen E. Lee and Stephen Hulburt resigned. It was given out at the time that they quit because of medical association pressure, but I know to the contrary. These physicians resigned because they were not permitted to treat their own private patients and because by that time they did not believe that Group Health would succeed. Two physicians coming from the West after a few days saw how things were going and went back home again.

It was physically impossible for the staff doctors to give time enough to make careful diagnosis or to give proper medical service. Each of them had between forty and sixty patients a day. Group Health clients had no choice; physicians and specialists were arbitrarily assigned to them. Patients were visited at their homes by clinic doctors, all of whom were required to be on call at night after long days in the clinic.

Dr. Richard H. Price resigned from the Group Health organization because of this inadequate service, but he returned when promised an increase in salary and more assistance. However, the promise of a larger staff has not been fulfilled because of dwindling membership and funds. When I left the organization, Group Health had about 3,600 members; today it has between 1,200 and 1,400. Dues have been increased

several times. Group Health is running further and further into the red, and its demise may not be long delayed.

The writer concluded that this experiment in Washington would have been successful if properly organized and operated, instead of being used as a stepping-stone for reformed medicine. The danger, he believes, lies in the attempt at lay control of medical treatment.

WHILE the Group Health Association is thus struggling to keep its head above financial waters in Washington, D. C., we find an interesting coöperative venture along a line which has always been, unfortunately perhaps, allied with the practice of medicine—meaning the undertaker. In *Public Ownership of Public Utilities* for July, 1939, there was published an item, entitled "Bury Yourself at Half Price," which stated:

> Iowa farmers who found that the excessive costs of burial wrecked family finances and often placed an unbearable burden on those who lived have taken matters in their own hands, organized burial coöperatives and now are conducting some of the finest burials in the state at less than half price.
>
> In September, 1929, a group in and around Pella (Iowa) met together to consider what could be done about the high cost of funeral service and caskets, Reuben Schakel, president of the Iowa State Federation of Coöperative Burial Associations declared in an article in the July issue of *Consumers Coöperation*. It seemed to them that they were being taken advantage of at a time when their bargaining power was at its lowest ebb.
>
> With 350 families signed up, the first burial co-op rented a building, employed a licensed embalmer, bought a complete line of caskets, a hearse, and other necessary equipment and started service. Three years later a beautiful funeral home was purchased and today membership in the Pella co-op has increased to 869 families.

The usual cost of the most inexpensive funeral is said to be about $97, while the most elaborate is $172, under the coöperative plan. To this may be added $65 for a metal or concrete vault. Inspired by the success of the Pella Coöperative, nine other burial coöperatives have been organized in Iowa and a state federation has been created to assist in the organization of new associations.

Cheap Power and Industrial Migration

IT was in 1933 when the Federal government was about to embark on its venture in the Tennessee valley that David E. Lilienthal, newly appointed power director of the Authority, predicted heavy migration of industry into that area. He was quoted as stating:

> It is my firm conviction that the Tennessee valley region is to be the scene of an expansion of industry which in the course of the coming decade will change the economic life of the South. If this industrial development is controlled in the interest of the entire community and fitted into a national program, it will stimulate and regenerate the industrial life of all America.

Six years have passed and there has been no impressive evidence that the Tennessee valley is about to become an American version of Germany's "Ruhr" district. Of course, friends of TVA can point with some reason to the fact that during that period the TVA has been hampered by litigation and badgered by investigation. It is also reasonable to expect that TVA will make a better showing in the near future as a result of the recently approved negotiations for purchase of facilities and settlement of its differences with the private power companies.

However, neither litigation nor investigation nor deferred negotiation for distribution facilities has stayed the TVA from holding out attractive rates for wholesale power supply to large industries. Whether this business is a profitable one for TVA is beside the point. The lure of cheap power is and has been there for a number of years. If it is ever going to be an effective inducement for industrial migration into the Tennessee valley it ought to be showing results.

Daily Oklahoman

WEARING A SHEEP'S MANTLE

So far only a few companies engaged in the electrochemical industry have taken advantage of the large amount of secondary power available in the valley to establish plants. So far this has resulted more in the partial subsidization of this particular type of industry, rather than the general improvement of industrial conditions.

Thus, it would appear that we must look elsewhere for an explanation as to why the cheap power bait has not yet produced results. Figures recently issued by the U. S. Bureau of Census furnish an important clew. On June 16, 1939, the bureau released as part of its "Census of Manufactures: 1937," preliminary figures on the "cost of materials, contain-

ers, fuel, purchased electric energy, and contract work."

These figures give a breakdown by industrial groups for 1937 and 1935 (and by geographical divisions and states for 1937) on the cost of electric energy among other material costs used in various manufacturing lines. Generally speaking, the results show that the cost of electricity plays a relatively insignificant part in the total cost of various important manufactured items.

HERE is a brief digest of the 1937 Census figures, with respect to electricity as a manufacturing expense item (*i e.*, omitting "fuel," "materials and containers," and "contract work"):

Industrial Products	*Total Cost (000 omitted)*	*Power Cost (000 omitted)*	*Percentage Power Cost*
Food	$7,911,368	$71,905	0.9
Textiles ...	4,089,124	64,180	1.6
Forestry ..	1,173,930	15,920	1.4
Paper	1,208,153	25,692	2.1
Printing ...	793,091	18,036	2.3
Chemicals ..	1,927,948	45,954	2.4
Coal—Oil ..	2,366,802	11,664	0.5
Rubber	514,260	9,318	0.2
Leather ...	899,469	5,638	0.6
Ceramics ..	523,111	30,268	5.8
Iron—Steel.	4,047,686	77,952	1.8
Other metals	1,926,525	19,140	1.0
Machinery .	2,424,494	40,440	1.7
Transit eqt.	4,099,755	22,481	0.5
Misc.	1,633,609	9,095	0.5
Average ...	$35,539,332	$467,691	1.3

In addition to these studies comparing the electric power factor to total manufacturing costs for the various lines, the Census Bureau also released figures showing the relationship of such costs to the "wholesale value" of the finished manufactured products. This latter study is somewhat less satisfactory for determining the importance of electric power to the manufacturer, because Census figures combine the cost of fuel with purchased electricity. Nevertheless, even this combination figure reveals the cost of electric power in a rather inconsequential light. In an analysis published in the *New York Herald Tribune* on July 2nd, Earl C. Sandmeyer, utility editor for that publication, stated:

> The Census Bureau's figures show that the combined cost of fuel and purchased electricity by all manufacturing industries in 1937 was less than 2½ per cent of the total wholesale value of the products manufactured. Since much of the fuel was used for heating purposes, it is estimated that the cost of electricity in industry as a whole is slightly more than one per cent of the average wholesale value of finished products.
>
> In 1937, the factories of the United States purchased about 46,000,000,000 kilowatt hours of electricity at an average cost of one cent a kilowatt hour. This compares with the purchase of 37,000,000,000 kilowatt hours in 1929 at an average of 1.3 cents a kilowatt hour.

MR. Sandmeyer referred to another study of these figures being circulated among private utilities which indicates that, for the country as a whole, a drop of only 4 per cent in the cost of raw materials would completely offset the cost of all fuel and all purchased energy in the manufacturing industries. It appears from these Census figures that except for the production of chemicals, paper, cement, and allied products, the cost of electricity is not a factor of sufficient importance to encourage factories to move from large industrial centers where the availability of skilled labor, transportation facilities, and proximity of markets are far more vital.

Even in the case of chemicals, purchased power accounts for only 2.9 per cent of the wholesale value and only 4.3 per cent in the case of paper and allied products. In the case of cement and allied products, the relation of electric power cost to the wholesale value rises to 8.3 per cent. Further analyzing the official statistics, Mr. Sandmeyer stated:

> According to the Census Bureau's figures, all manufacturing industries spent $468,000,000 for purchased electricity in 1937, compared with $476,000,000 in 1929. Electricity and fuel purchases combined totaled $1,425,000,000 for 1937, being equivalent to 2.4 per cent of the wholesale value of goods made, against $1,974,000,000, or 2.7 per cent of the wholesale value of goods made in 1929.
>
> Wages and salaries accounted for 21.2 per cent of the wholesale value of goods manufactured in 1937, against 21.7 per cent in 1929, while other manufacturing costs (excluding fuel and power) accounted for 17.9 per cent, against 21.0 per cent, and costs of materials, etc., accounted for 58.5 per cent, against 54.6 per cent.
>
> The study further shows that in the manufacture of all transportation equipment (automobiles, airplanes, etc.) fuel and purchased electricity account for only 0.8 per cent of the wholesale value of such prod-

ucts. For textiles, fuel and purchased energy represent 1.6 per cent of the wholesale value of finished goods; foods, 1.4 per cent; printing and publishing, 0.9 per cent; petroleum and coal products, 3.6 per cent; rubber, 2 per cent; leather, 0.7 per cent; and machinery, 1.3 per cent.

These figures give the disinterested observer valid reason to suspect that cheap power alone will never cause industry to be torn up by the roots and moved from one end of the country to the other.

—F. X. W.

U. S. Census of Street Railway Operations

PRELIMINARY figures were released recently by the U. S. Census Bureau on its "Census of Electrical Industries: 1937," which tells quite an impressive story about street railway abandonment in the United States over the last decade. According to these figures approximately one-half of the street and interurban electric railway operations in the United States disappeared during the ten years from 1927 to 1937. During the decade, the number of operating companies decreased by 56.9 per cent; miles of track operated, 41.6 per cent; revenue passengers, 38.5 per cent; operating revenues, 44.2 per cent; net revenues, 53.9 per cent.

Important features of the Census release were in part as outlined in the table below.

So far as the use of electric power is concerned, a part of the large decrease thus indicated was compensated for by the substitution of trolley busses. Never-

Item	*1937*[1]	*1932*	*1927*	*Per Cent Increase or Decrease (—) 1927-1937*
Number of companies, total	478	706	963	—50.4
Miles of track operated, total	23,770	31,548	40,722	—41.6
Number of cars, total	58,371	79,984	93,246	—37.4
Passenger traffic, total	9,416,783,155	9,854,185,145	14,901,435,276	—36.8
Passenger miles	1,442,406,304	1,642,022,655	2,084,565,874	—30.8
Freight, express, miles	47,284,760	39,468,109	79,207,108	—40.3
Revenue passengers carried per—				
Mile of main track	356,697.1	279,516.8	328,803.0	8.5
Revenue passenger car-mile	5.1	4.8	5.8	(3)
Revenue passenger car-hour	57.6	54.4	60.1	(3)
Operating revenues, total[2]	$513,128,718	$566,289,989	$918,869,056	—44.2
Operating expenses, total[2]	$406,118,560	$442,606,685	$686,638,415	—40.9
Net revenue (railway operations)[2]	$107,010,158	$123,683,304	$232,230,641	—53.9
Taxes (railway), total[2]	$40,400,332	$40,669,809	$57,808,597	—30.1
Operating income[2]	$180,255,608	$275,058,437	$175,488,076	..
Salaried employees, total number[3]	18,068	20,260	27,845	—35.1
Salaries, total[2]	$38,630,312	$40,146,625	$56,647,314	—31.8
Wage earners, total number[3]	134,408	161,571	236,730	—43.2
Wages, total	$217,743,899	$241,134,104	$380,977,607	—42.8

[1] The data for 22 companies, operating on a part-year basis, are excluded from this report. These companies reported 36,810,221 passengers; 9,108,009 car-miles; 1,042,866 car-hours; $2,388,295 operating revenue; and $2,412,010 operating expenses.

[2] Figures for 1937 not comparable with those for 1932 due to the inclusion for 1932 and exclusion for 1937 of data for trolley-bus operations. Data for trolley-bus operations were collected on a special schedule for 1937 and a separate report issued covering such operations.

[3] Represents, for 1937, the average of the number reported on the payroll as of June 30th and December 31st of that year.

theless, the marked change in modes of transportation obviously means a substantial loss of revenue to those utilities which were supplying wholesale power.

Incidentally, Federal promotion of public power operations may have some small effect in swinging the balance in favor of trolley bus equipment, as distinguished from automotive equipment. An instance of this was recently noted in the vicinity of Bonneville dam where plans of a local transportation company to install auto bus equipment were canceled in the face of objections that trolley bus equipment would provide an opportunity for utilizing Bonneville power.

—F. X. W.

Social Security *versus* Social Solvency

"MUCH has been said and much has been done in our times to obtain social security, but unless we keep our constitutional government secure, the much vaunted social security which is being held before our people, and for which deductions are being made from the wages of toil, will prove to be as false as a face of painted paper. You cannot squeeze red blood from white turnips, you cannot gather grapes from thorns or figs from thistles, and you cannot obtain social security, or security of any kind, from a government that is insecure.

"Beyond doubt, the social security program has its desirable purposes and its commendable features. The fact remains that present financing plans are inadequate and that their continuation must mean added expenditure and increased taxation. To be secure against the ills that old age may bring or that unemployment may occasion, to have all our people secured against the essential ills and fortuitous calamities of life, is indeed a consummation devoutly to be wished. It cannot, however, be had by being wished for; it must be paid for. The mere fact that something is desirable does not necessarily mean that it is wise for the government to provide it, or that the cost of obtaining and expense of maintaining it may be disregarded. A man who provides himself with everything he thinks desirable, whether he can afford it or not, is headed for bankruptcy, and a government which pursues a like policy cannot expect to avoid like consequences.

"All will agree that our government should do all that can be safely done for the welfare of our people, but we should do more paying as we go and we should be less ready to pledge the credit of the future. To pass out benefits and gratuities with a liberal hand may be or seem to be the part of generosity, but there can be no charity or even justice in a spendthrift prodigality that would jeopardize our national safety. There can be no wisdom in piling up the eggs with one hand and killing the goose with the other. To live within one's means is the duty of a nation as well as of an individual, and penalty will follow dereliction, as night follows day, for the one as for the other, with unfailing fatality."

—LINUS A. LILLY, S. J.,
Regent, School of Law, St. Louis University.

The March of Events

Bonneville Surveys

THE Bonneville Administration recently announced that approximately $500,000 would be spent during the current fiscal year on surveys for new lines which eventually will provide a power network of 1,400 miles of high-tension transmission lines extending to all major populated areas of the Pacific Northwest.

Approximately 800 miles of future transmission lines will be surveyed during the year. The project already has completed nearly 600 miles of surveys.

The principal survey would be for a 220,000-volt circuit to Grand Coulee via Puget Sound, announced last month. This line would be about 290 miles long, the longest high-voltage, alternating current line in the United States.

A projected 90-mile line from Bonneville's Midway substation in the heart of the Yakima valley to Pasco, Umatilla, and Pendleton will be surveyed. Other survey projects follow:

A 50-mile line from Kelso, Wash., to Astoria; a 50-mile line from the St. Johns substation to Rainier, Ore.; a 90-mile line from near Oregon City to Tillamook; and a 50-mile twin circuit from Bonneville dam to Oregon city.

Funds for actual construction of such lines, other than the Puget Sound line, were yet to be obtained from Congress, it was said.

Rankin Demands Yardstick

RENEWING his demands for a power rate yardstick in New England, Representative Rankin, Democrat of Mississippi, said recently "a utility fascisti has dominated New England for forty years." Rankin said in a statement that New England states were overcharged $100,000,000 a year for electric lights and power, and declared "representative government seems to have disappeared there." He stated:

"These utilities now bringing out their college professors to attack the national administration's power policies in general, and the TVA in particular, have virtually complete control of the New England states, as well as many other states throughout the Union.

"The vicious attacks now being made on TVA by the power trust professors in New England, and especially in New Hampshire, are so patent they ought to arouse the indignation of the people of these states to revolt against this utility supergovernment that is literally sucking the life blood from the electric light and power consumers of New England."

Rankin declared "if we could give New England a TVA it would reduce light and power rates at least 50 per cent."

To Ask Tax Replacement

TENNESSEE and other states served by the TVA intend to seek passage of the tax replacement measure in the next session of Congress. After a conference on July 28th at Nashville with Tennessee Valley Authority and state officials, Governor Prentice Cooper of Tennessee said a TVA-sponsored bill would be introduced to provide for reimbursement of state and county taxes to be lost through municipal-TVA purchase of private utilities.

James P. Pope, director of the TVA; Dr. T. L. Howard, TVA economist; and Lou McFarland, attorney for the state utilities commission, met with Cooper.

Mississippi, Alabama, Georgia, and Kentucky would be interested as much as Tennessee in enacting a tax replacement measure, the governor said.

An anticipated utility tax loss to Tennessee has been estimated variously from one to over three million dollars as a result of the purchase of Tennessee Electric Power Company. A Tennessee Taxpayers' Association estimate placed the revenue loss at $3,500,000, while a survey by McFarland set the annual loss at $796,028.

Senator Norris on July 31st introduced legislation providing for a system of payments by the TVA to states in lieu of taxes, based on recommendations of the TVA board.

Ickes Asks Dam Power

INTERIOR Secretary Ickes urged the House Rivers and Harbors Committee last month to approve legislation empowering him to appoint subordinate officials as well as an administrator for the Bonneville project. Ickes said he had authority to appoint only the administrator. The assistant administrator, chief counsel, and chief engineer must be named

by the administrator, he added. A bill by Representative Walter Pierce, Democrat of Oregon, enacted by the House on July 31st with amendments, gave Ickes the power to appoint, without regard to the civil service laws, an assistant administrator and a chief engineer to the Bonneville project, with compensation of each not to exceed $7,500 a year. It also extended for one year the preferential rights and priorities of public bodies and coöperatives to contract for not less than 50 per cent of the electric energy produced. The Senate has approved a companion measure. Differences will be settled in conference, possibly before the end of the session.

Ickes said the proposed changes would cure defects in the Bonneville set-up. He had said $9,000 salaries were justified, considering what private business paid, and that the government had to compete for the services of competent men.

Representative George A. Dondero, Republican of Michigan, told Ickes his request was evidence of "bureaucracy of the government."

Profit Visioned for TVA

DAVID E. Lilienthal, director of the Tennessee Valley Authority, recently envisioned for President Roosevelt a bright future for the Tennessee Valley Authority, predicting it would be "making money" soon and estimating that its eventual revenues would be $25,000,000 annually.

He asserted that he had informed the President that the closing of deals for the Tennessee Electric Power Company and other Commonwealth & Southern Corporation properties in north Alabama and Mississippi would leave behind the most controversial parts of the power program.

Mr. Lilienthal said he reported to the President the reaching of an agreement at Nashville under which a new $78,600,000 contract for the purchase of TEPCO properties would be consummated August 15th. Under a compromise bond bill passed last month, which the President signed on July 26th, TVA can issue up to $46,000,000 to pay its share of the deal, with Chattanooga, Nashville, and other municipalities and coöperatives paying the balance.

A deal with Wendell L. Willkie, president of Commonwealth & Southern, for the purchase of certain Mississippi and Alabama Power Company properties in 27 counties was also expected by Mr. Lilienthal to be consummated by August 15th.

With the contracts signed, the director said, TVA would have completed its utility purchasing program and have a market for the 10-dam TVA system along the Tennessee river. Five of these dams have been completed, four are under construction, and one was as yet unauthorized by Congress.

In the first year after negotiations go through, Mr. Lilienthal said, TVA revenues should be $12,000,000, sufficient to cover expenses, compared with last year's $6,000,000. Eventually, he predicted, revenue would reach $25,000,000.

NLRB Inquiry Ordered

THE House last month ordered a sweeping investigation of the National Labor Relations Board. A resolution creating a 5-man investigating committee was put through by an almost solid phalanx of Republicans and a large group of Democrats.

Speaker Bankhead announced the roll call vote for the resolution was 252 to 135.

The measure, by Representative Smith, Democrat of Virginia, called for an inquiry to determine whether a new board to administer the Wagner Labor Act should be created and what effect the board may have had on employer and labor relations.

Sponsors claimed the inquiry was necessary to meet "tremendous pressure" from all parts of the country, while opponents asked that action be deferred until the labor committees of both the Senate and House could conclude their hearings on Wagner Act amendments and make recommendations of their own.

FPC Warns Utilities

THE Federal Power Commission on July 20th said that 21 public utility companies had until August 15th to show cause why court action should not be taken against them for failure to file original cost statements.

The companies named were the Carolina Aluminum, Hartford Electric Light, Kansas Power & Light, New York Power & Light Corporation, Ohio Public Service, Commonwealth Edison, Kentucky Utilities, Mesilla Valley Electric, Missouri Power & Light, Pennsylvania Edison, San Diego Consolidated Gas & Electric, Southwestern Gas & Electric, West Texas Utilities, Brockton Edison, Iowa Electric, Pittsfield Electric, United Electric Light, Ozark Utilities, Illinois Northern Utilities, Niagara, Lockport & Ontario Power, Wisconsin Gas & Electric.

Officials of the commission said that under the Federal Power Act these companies were required to file original cost statements by January 1, 1939. Their failure to do so, the officials added, probably was due to a desire on the part of the companies for more time in which to prepare their data.

House Passes Lea Measure

THE House on July 26th passed the Lea bill to coördinate the transportation systems by bringing under Interstate Commerce Commission regulation all carriers except the aviation industry.

Passage came after the House had refused,

273 to 100, to recommit the bill on the motion of Representative Wadsworth of New York and after declining to strike out of the bill the provision for bringing water carriers under the ICC's regulatory powers.

Meanwhile, the Senate Interstate Commerce Committee reported favorably the Wheeler resolution directing the ICC to study the so-called Hastings plan for "postalization" of railroad rates. The plan envisages 10 inter-urban areas of 250 miles in length, within which the passenger rates would be $1.25. A person might travel from Washington to New York for $1.25; from Washington to Chicago for $5; and from Washington to San Francisco for $12.50.

The Lea bill was a substitute for the measure passed earlier in the year by the Senate, which represented Senator Wheeler's views on ICC regulation of the transportation system.

Leaders of both houses suggested that the two measures go to conference, and that the differences be ironed out during the recess of Congress. The compromise proposal then would be laid before Congress next January.

Secretary of Agriculture Wallace, in a strongly worded statement, last month contended that the legislation to bring water carriers under Federal control would not solve the nation's transportation problem. His remarks were addressed to Speaker Bankhead.

Would Tax City Utilities

THE assessment total for the city of Toronto would be increased by nearly $40,000,000 if the Toronto Transportation Commission, the Toronto Hydro-Electric System, and the city's waterworks were to pay taxes on the same basis as a privately owned utility, Assessment Commissioner W. George Farley said recently. This increase would be equal to about 4 per cent of this year's assessment of close to $1,000,000,000.

Mr. Farley, who was preparing a report for a special taxation committee of the city council on the advisability of taxing the three utilities, estimated the TTC would pay on an assessment of about $15,000,000 if it were a private company, the Hydro on an assessment of about $12,000,000, and the waterworks system on an assessment of about $12,000,000.

Referring to an exhaustive report he prepared in 1935 when he recommended taxing the three utilities, Mr. Farley said the Toronto Street Railway in 1922, under private ownership, paid on an assessment of $5,510,886, including land, buildings, equipment on the streets and in buildings and business assessment. In 1935, as now, the TTC paid taxes on a land assessment of $2,431,836, plus an assessment of $97,200 for buildings it did not use in street car operation.

Alabama

Square Deal Aim of New Bill

A COMPROMISE bill assuring a "square deal" both to private utilities and municipalities contemplating installing power distribution systems, and reportedly acceptable to the Alabama Power Company and the Alabama League of Municipalities, on July 28th was introduced in the state legislature.

The bill, modeled somewhat after the Wisconsin and Massachusetts law, would give a private utility concern the "protective legislation" which Thomas W. Martin, Alabama Power Company president, recently told the recess finance and taxation committee his company needed to set out on a $100,000,000 expansion program.

Incidentally, the utilities committee of the league met in Montgomery on July 26th to study the measure, which provides that when any municipality or other agency proposes to engage in the power distribution business, it be required to acquire existing utility properties in the vicinity at a price agreed upon between the utility concern and municipality, or fixed by the state public service commission.

The bill further provides that either party has the right of appeal to be taken to the circuit court district containing the greater portion, by value, of the property to be acquired. Such appeal would have to be taken within ten days after the commission issues its order.

Section 6 of the proposal provides that nothing in the act shall be deemed to require the purchase of or payment of compensation for any existing plant or distribution system within the corporate limits of any agency (municipality) in which the construction of an electric distribution system has been authorized by an election held prior to the enactment of the bill.

Rate Accord Reached

WORK on contracts and agreements expected to put into effect reductions in electric rates, estimated to save Birmingham consumers about $1,000,000 a year, was being rushed late last month by Birmingham Electric Company and Alabama Power Company officials.

Agreement that Birmingham consumers would be given the same rates Bessemer and Tarrant consumers receive from their new municipal electric plants was made by Commission President J. M. Jones, Jr., on July 25th, after the Alabama Public Service Commission had tentatively agreed to approve a contract putting the agreement in force.

New rates, Commission President Jones

said, would be effective as soon as the necessary contracts carrying out the agreement reached between the city, BECO, and the Alabama Power Company officials could be drafted, executed, and approved by the state commission.

California

Rate Apportionment Announced

APPORTIONMENT of a $1,000,000 reduction in Pacific Gas and Electric Company natural gas rates, effective August 1st, was announced by the state railroad commission recently. President Ray C. Wakefield of the commission declared that San Francisco consumers would save $243,000 annually through the reduction. Annual savings to East Bay consumers, he said, would aggregate $221,000.

Consumers in other northern California cities would, according to Wakefield, save the following amounts: San Jose, $39,000; Sacramento, $63,500; Stockton, $28,900; Fresno, $33,100; Modesto, $15,400.

The natural gas rate reduction was included in a $3,200,000 cut in Pacific Gas and Electric Company rates announced by the commission sometime ago.

Wakefield said the commission felt "the reductions are entirely equitable and afford the largest savings to those customers who have best earned them."

Franchise Offer Raised

THE Pacific Gas and Electric Company last month offered the city of San Francisco $350,000 a year for a power franchise, an increase of $50,000 over its original offer, but still short of the $500,000 asked by the board of supervisors.

City Attorney John J. O'Toole said he would report the company's offer to the finance committee of the board but it would probably be refused.

The flat payment would be in addition to the one per cent of revenue for gas and one-half per cent for electricity which the company pays to the city.

The company long has had a lighting franchise in the city, but has never been granted a contract for furnishing power.

Kills River Pact

RIZONA'S efforts to establish a tri-state compact of the lower Colorado river basin states came to naught recently when Governor Culbert Olson vetoed a bill which would have created a California-Colorado river board to negotiate with the other states.

He acted on the recommendation of the California Colorado River Commission, which recently addressed a communication to him declaring that the compact exceeded provisions of the Santa Fe compact and the Boulder Dam Project Act and was prompted by selfishness on the part of Arizona. Governor Olson commented that he saw "no necessity" for the compact.

The compact, which would have drawn Nevada into the agreement, provided for Arizona's ratification of the Santa Fe compact, but more clearly defined Arizona's rights.

Florida

Map Fight against Taxes

UTILITY interests of Miami were reported last month to be planning concerted opposition to any attempt the city commission might make to levy a gross receipts tax on them. The commission was said to have such a proposal under consideration.

Faced with the necessity for new sources of revenue, the commission was considering a general utility gross receipts tax on electricity, water, gas, and telephones, patterned after the existing Pensacola ordinance, which would produce many hundreds of thousands of dollars if left on the 4 per cent basis.

MacGregor Smith, vice president and general manager of the Florida Power & Light Company and its affiliates, said a gross receipts tax on utilities will meet with vigorous opposition from his concerns.

Indiana

File New Rate Scale

NEW electric rate schedules which officials of the Northern Indiana Power Company and the Public Service Company of Indiana said would result in annual savings of $236,000 to consumers were filed with the state public service commission on July 26th.

The Northern Indiana Power schedule, if approved by the state commission, would save customers annually more than $66,000, according to L. B. Schiesz, president, who said the reduction was voluntary. Robert A. Gallagher, president of the Public Service Company of Indiana, said if the rate schedule proposed by his company were approved, approximately 144,000 residential and commercial customers in 53 central and southern Indiana counties would save approximately $170,000 annually.

The Public Service Company proposed that its new rates be made effective after September 1st.

Iowa

Power Lines Authorized

THE state commerce commission granted 59 applications for authority to construct 847.51 miles of rural electric transmission lines, Barr Keshlear, commission chairman, reported last month. The applications were granted following the largest single hearing yet held by the state commission on such applications.

Of the 59 applications granted, 25 were approved for 11 rural electric coöperative associations, which will finance their installations with grants from the Federal Rural Electrification Administration. Total mileage to be erected by the rural electric coöperatives is 729.16 miles. The remaining applications approved were those of private electric corporations.

Commissioner Keshlear said the commission was requiring applicants to show that they have a sufficient number of customers signed up before franchises are approved.

Maryland

Maryland Utilities Association Meets

THE annual fall convention of the Maryland Utilities Association will be held at the George Washington Hotel, Ocean City, Md., on August 25th and 26th.

There will be combined meetings of the gas, electric, and transportation groups, with addresses by prominent speakers, who will talk on subjects of interest to all three groups. Entertainment has been provided for the afternoon of August 26th, to be followed by an evening program similar to that of previous years.

Massachusetts

Governor Adamant on Blue Sky Law

GOVERNOR Saltonstall declared recently that his attitude on the abolition of the "blue sky" securities division of the state department of public utilities had not changed, and that he still was calling for the abolition of the division, of which John H. Backus is the $6,500-a-year director.

The governor made the statement after he had been visited by the members of the senate ways and means committee, who had previously held a hearing on the abolition of this division and the abolition of the smoke inspection division of the same department. It was understood that members of the committee urged him to change his mind on both bills.

Gas Bill Assailed

ASSAILED as a "raid on the cities and towns," the bill placing gas companies under the provisions of law by which the commissioner of taxation and corporations values the property of utilities was engrossed last month by the state house.

Representative Harry Kalus, of Dorchester, protested that the gas companies and other utilities had found the state commissioner more lenient to them than the local assessors who have had the power to place valuations on the gas mains and conduits in the past.

Missouri

Tests Gross Receipts Tax

THE Laclede Power & Light Company filed suit in circuit court on July 25th under the declaratory judgment act, attacking the validity of the city ordinance levying a 5 per cent tax on its gross receipts. The petition contended the ordinance could not be enforced

against the company, and asked that St. Louis be enjoined from efforts to collect the tax.

The company has been paying a merchants' license tax of $1.25 per $1,000 gross sales of electricity, appliances, and stock. In its recent return to City License Collector Fred A. Renick, the company reported its sales of appliances and stock, but not of electricity, in view of the passage last May 31st of the ordinance it was disputing. Renick accepted the return on advice of Associate City Counselor Harold Hanke.

Nebraska

Private Utility Sale Sought

A MOVEMENT toward public ownership of properties of the Northwestern Public Service Company in the Columbus division took a new form recently with the circulation of petitions for the creation of a new public power district. The move was launched under sponsorship of Loup River Public Power District officials.

The district, to be known as the Consumers District, would purchase the Northwestern under a lease purchase agreement, tentative terms of which have been worked out by Loup representatives and the company.

The deal was negotiated by Guy C. Meyers, Wall Street financier, who until a short time ago had a contract with the three big Nebraska hydroelectric districts to purchase all private power companies in Nebraska. Meyers was said to have worked for a long time on the deal. He is to receive approximately $30,000 in commission, to be paid monthly over a 5-year period. The Loup River District had not renewed its contract with Meyers. The Tri-County and Platte Valley districts had stated they would not renew the 1-year contract they had with him.

Two steps would be needed to carry the proposal to a successful conclusion:

Securing of sufficient signatures to obtain formal creation of the district by the state department of roads and irrigation.

Granting of a new 25-year franchise to Northwestern by a vote of the people of Columbus, the franchise to be assigned by the company to the Consumers District upon delivery of the property.

An immediate 10 per cent reduction in rates was promised, with other reductions contemplated from year to year.

The stipulated purchase price was $1,259,000 for all Northwestern holdings in this division, including $50,000 in cash and current accounts to be turned over to the district by the company.

New Jersey

FPC Claims Jurisdiction

A PRECEDENT-SETTING determination finding that an electric utility whose physical lines are located wholly within a single state but whose lines comprise part of the path-way by which electric energy is transmitted in both directions across state lines is a public utility within the meaning of the Federal Power Act and therefore subject to the jurisdiction of the Federal Power Commission, was made by the commission on July 20th. The decision was made in the matter of New Jersey Power & Light Company and Jersey Central Power & Light Company.

As a result of this decision the commission found that the acquisition of 341,350 shares of the common capital stock of Jersey Central Power & Light Company by New Jersey Power & Light Company without prior authorization from the commission was a violation of § 203(a) of the Federal Power Act.

On June 7, 1938, the commission issued a show-cause order directing New Jersey Power & Light Company to submit detailed information concerning its reported acquisition of the common stock of Jersey Central Power & Light Company, in apparent violation of the Federal Power Act, and to show cause why the commission should not proceed against the company. On July 5, 1938, the commission instituted an investigation to determine all the facts relating to the transaction. Public hearings upon these matters began September 27, 1938, and were concluded October 10, 1938. The commission's findings are the result of a review of the evidence presented during the hearing and a study of the briefs in support of the various contentions. At the hearings both utilities contended that Jersey Central is not a public utility within the meaning of the act, and therefore denied violation of any nature.

Jersey Central Power & Light Company owns and operates transmission facilities extending from the substation adjacent to its generating plant in South Amboy, N. J., to the south bank of the Raritan river where such facilities are joined to the lines of Public Service Electric & Gas Company. Public Service's lines extend from the south bank of the Raritan to Mechanic street, Perth Amboy.

New York

State Water Power Plan Advocated

THE plan of the New York State Power Authority for the development of the water power resources of the St. Lawrence and the Niagara rivers was strongly defended recently by Charles Poletti, lieutenant governor, at the seventieth anniversary of the founding of Watertown as a city.

After outlining the proposal and enumerating the benefits claimed for it, the lieutenant-governor denied that the plan would injure the investments of private utilities. He further stated:

"The plan is based on the continued operation of the present private distribution systems without any change in their status. Existing private plants would be utilized to their full capacity. There would be only one additional factor. As I have already indicated, the contemplated public power plants on the St. Lawrence and Niagara would develop power for sale to, and distribution by, the existing private utilities. But the contract under which that power would be sold to the private distributing companies would include provisions assuring the lowest possible rates to consumers. That method has already demonstrated its practical efficiency at Bonneville, where it has been used with the greatest success."

North Carolina

Bagley Named for New Term

DUDLEY Bagley of Moyock and Raleigh was reëlected chairman and director of the North Carolina Rural Electrification Authority last month. Dr. Jane S. McKimmon of the State College was elected vice chairman, a new post, and David S. Weaver of the college was reëlected secretary. J. M. Grainger, engineer, was retained in that capacity and also was elected assistant secretary.

Bagley has headed the authority since its organization July 1, 1935. At the end of June this year, Bagley reported that the authority had approved 14,368.24 miles of rural lines to serve 74,608 customers, and that 10,409.08 miles had been constructed and were serving 58,804 customers.

Upon its organization the authority had a survey conducted and set as its goal 6,002 miles of lines to serve 32,058. The actual accomplishment has doubled the goal.

The authority approved the application of the Pitt-Greene Electric Membership Corporation for a loan of $80,000 with which to extend its lines into Greene county.

Also approved was a $101,000 loan sought by Randolph Electric Membership Corporation. The authority gave tentative approval to the Randolph Corporation's request for an amendment to its charter that will enable it to extend its lines into Alamance county.

Director Bagley reported that the application of the Jones-Onslow Coöperative for a $250,000 loan was being forwarded to the REA in Washington.

Ohio

Urges City Light As "Yardstick"

WHEN the city hired independent engineers to investigate the financial and operating set-up of the Cleveland Electric Illuminating Company, it also should have commissioned them to make the same kind of investigation in the municipal light plant, Councilman William C. Reed asserted recently at the first hearing before the city council utilities committee on an ordinance to cut CEI's Cleveland rates by $2,099,000 a year. Reed, the council's leading advocate of public ownership of utilities, said:

"This committee should have before it a report showing what it costs us to generate power at the municipal plant. Maybe such a report would show how the plant could be more efficient and then we would know what the charge for a kilowatt hour of energy should be. That would make it simple to set electric light rates for Cleveland."

Reed asserted that, in acting on the proposed Illuminating Company rate cut legislation, the committee would have to make a recommendation to the council "without using the greatest piece of information we have—the rate regulation of the municipal light plant."

The councilman has frequently contended among his colleagues that the municipal utility should be Cleveland's electric rate "yardstick" in fact as well as in name, and that its rates should be the criterion for fixing the charges that may be collected by CEI.

The controversy between the city and the Illuminating Company was reported late last month to be in a state of suspended animation to permit the law department to prepare a rul-

ing for the utilities committee on the legality of the method by which the city's rate experts computed the proper basis for CEI rates in Cleveland.

Oklahoma

GRDA Permit Granted

THE Grand River Dam Authority was granted a license by the Federal Power Commission on July 27th for construction and operation of the hydroelectric project near Vinita. The license permits the GRDA to condemn needed lands in the courts.

The license was granted after Army Engineers, who had urged a larger reservoir for flood control storage, agreed to permit the work to proceed on present plans with the reservoir up to the 745-foot level.

The commission explained that the license provided that control by the War Department over operation of the project for flood control above 745 feet would be conditioned on acquisition by the government of all necessary lands, easements, and right-of-way above that level.

Pennsylvania

Hits Utility Cost Theory

THE prospect of another series of hearings in a 6-year-old gas rate case recently prompted Utility Commissioner Richard J. Beamish to assail the "reproduction cost" theory of evaluating utilities' property—a vital factor in determining charges to a utility's consumers.

The state superior court instructed the commission to accept evidence relating to the reproduction costs of the Pennsylvania Power & Light Company as of 1937-38, in litigation involving the company's rates for natural gas service in Williamsport and near-by communities.

"Reproduction costs" are the estimates of cost for replacing a utility's property—down to the last telephone pole, foot of wire, and every other piece of equipment. Reams of testimony must be heard as attorneys, engineers, and technical experts argue over the value. Beamish favored, instead, a determination of value on the basis of the original cost of the property, taking depreciation into consideration, and making an adjustment to allow for the cost of reproduction.

Agency Gets Lower Rates

THE Metropolitan Edison Company, of Reading, on July 28th had state public utility commission authorization to file a special reduced electric tariff for service to public agencies organized under the State Housing Authority law.

The ruling applied specifically to the Reading Housing Authority, which plans to develop a 400-unit housing project. When this project is completed the utility will sell electricity to it as a single unit through the authority, rather than meter the individual homes.

Under this set-up, electricity will be delivered at a single point at a minimum of 2,300 volts, instead of the usual 110 or 120 volts. Power will be billed at the rate of 8 mills a kilowatt hour directly to the authority, which will pro-rate the cost among the tenants as part of their rent. The regular rate is one cent per kilowatt hour.

Texas

Federal Agency Aids Power Lines

THE first definite evidence of coördination of public and private power facilities came to light recently with the disclosure of the terms of contracts entered into by operating units in the $3,000,000,000 Electric Bond and Share Company system and the Lower Colorado River Authority, the "little TVA of the Southwest."

As a collateral feature of an arrangement whereby the LCRA is to take over electric properties in 16 counties in Texas served by the Texas Power & Light Company for an agreed price of $5,000,000, an agreement had been worked out calling for the sale by the Federal government's power agency of 60,000 kilowatts to Texas Power & Light and Houston Lighting & Power Company. The LCRA has a rated generating capacity of approximately 100,000 kilowatts, it was said.

Texas Power & Light and Houston Lighting & Power are owned by the American Power & Light Company and the National Power & Light Company, respectively, both intermediary holding company subsidiaries in the

Electric Bond and Share group. Transfer of the Texas Power & Light properties in the 16 counties to the LCRA was scheduled for August 1st.

The contract for the sale of power to the private companies would afford the authority, a $36,000,000 Federal hydroelectric undertaking, an income of about $890,000 a year under average conditions. The Texas Power & Light Company would take 45,000 kilowatts of capacity and Houston Lighting & Power would take 15,000 kilowatts. On this basis approximately 93,000,000 kilowatt hours of primary energy, and such additional amounts of secondary as may be available, would be purchased by the two companies.

Utah

Order Hints Reduction

A FURTHER reduction in electric service rates to Utah consumers was seen recently when the state public service commission requested the Utah Power & Light Company to make a study looking to rate cuts in certain classes of service.

Although the commission would not arrive at a definite conclusion until the study was completed, Chairman Ward C. Holbrook said the commission had in mind new rates for residential and farm users which would result in a saving "of something in excess of $150,000 a year to the consumers of the state."

Mr. Holbrook said the commission also had given consideration to the advisability of reductions in commercial lighting rates, but had not assembled sufficient data to indicate the extent of the reduction. He said the board believed that in the near future it would be in a position to request the power company to give special attention to this matter "in the interest of users of power for commercial lighting purposes."

George M. Gadsby, president of the power company, said he had received the request of the commission for an immediate study of farm and residential rates and would give prompt attention to the request. He stated he would appear before the commission with the information desired, as soon as possible.

Washington

City Light Rate Slashed

SEATTLE City Light power rate reductions, which were said to meet or were lower than the cuts recently announced by the Puget Sound Power & Light Company, were approved by the city council's utility committee on July 19th. The new rates, effective September 1st, will save City Light customers $210,000 a year.

Lighting Superintendent Eugene R. Hoffman, who filed the new rate schedule with the committee, said that home owners who use a large amount of electricity will enjoy a lower rate than offered by the private utility under its schedule of reductions.

For the first 40 kilowatts used, the city reduction is from 5 to 4½ cents a kilowatt, the same as that of the Puget Sound Power & Light Company. Previously the rate for the next 200 kilowatts had been 2 cents. The city is reducing this so that the rate for the next 180 kilowatts is 2 cents. The private firm's new schedule retained the 200-kilowatt mark.

This was said to mean that City Light customers would get into the higher cheap-rate bracket for power, which is three-fourths of a cent a kilowatt, quicker than the private firm customers. City Light's low rate is effective after using 220 kilowatts, the private firm's rate, after using 240 kilowatts.

Mayor Arthur B. Langlie, asserting the reductions had been carefully studied, said "the new rate will not only result in savings to the people of Seattle, but also will invite greater use of electrical current by the people, which in turn eventually will enable further revision downward in light and power rates."

The commercial rate of City Light for the first 40 kilowatt hours also was reduced from 5 to 4½ cents a kilowatt. Hoffman told the committee:

"Our records show that each reduction brings a compensating increase in business, and we expect that the revenue increase will compensate for this rate reduction in about one year."

Besides the rate changes, the bill included a provision for billing "to the nearest penny." City Light heretofore has billed to the nearest nickel, while Puget Sound billed to the nearest cent. This change would mean no average saving to customers, Hoffman said, but would afford a more even rate comparison of the public and private systems in future surveys. In the past individual bills picked out in such surveys made one utility's rate seem higher than another because of a 2- or 3-cent difference in the bill, whereas the rate actually was the same.

Hoffman hoped the new residence rates would encourage customers to install water heaters, regarded as the best opportunity for new residential business now.

The Latest Utility Rulings

Commission Approves Reorganization Plan of St. Louis Public Service Company

A PLAN of reorganization of the St. Louis Public Service Company, involving the consolidation of the company's street railway properties and the motor bus properties of the subsidiary Peoples Motor Bus Company, was approved by the Missouri commission. The commission stated the elements to be considered in determining the fairness and feasibility of the plan as follows:

> Consideration of whether the plan should be approved or disapproved should turn, in our opinion, on the answers to the questions: (1) Is the present fair value of the property sufficient to warrant the issuance of the proposed securities? (2) Is the plan feasible? (3) Does the plan provide equitable treatment to the creditors and the security holders of the company?

The plan was held to be fair in allowing all security holders to participate, since the total capitalization before reorganization was approximately $50,000,000, the investment cost of the property depreciated was approximately $41,000,000, and the reproduction cost depreciated was nearly $48,000,000. The present difficulties, in the opinion of the commission, were largely the result of disturbing factors inherent in the street railway business which had kept the company from earning a fair rate of return on the fair value of the property. The commission said concerning the fairness of a reorganization plan:

> The right of a class of security holders to participate in a plan of reorganization should depend upon whether the value of the property shows the existence of an equity for them. Where there is no equity for a particular class, holders of securities of that class should not be accorded participation unless they make a fresh contribution to the business in money or equivalent.

Re St. Louis Public Service Co. (Case No. 9732).

Accounting Orders Held to Violate Rights of Utility Corporations

THE appellate division of the New York Supreme Court annulled and reversed certain orders of the commission and remanded for further action the matter of accounting entries reflecting the acquisition of utility assets. The court held that the commission had not followed the rules laid down in judicial decisions relating to the power of the commission to attach consents to orders authorizing property transfers and relating to the independent power of the commission to make rules and regulations.

The commission some years ago had approved the transfer of utility property on condition that entries reflecting the acquisition of assets should be based upon original cost of construction as later determined by the commission. The respective vice presidents of the corporations had filed an acceptance of the order. Later the commission directed certain items to be stricken from the capital account as not related to original cost of construction. Entries reflecting a decrease in the capital accounts because of the commission's engineering division computing depreciation on a straight-line basis were ordered made. It was directed

that there be stricken from the books items representing property which the commission said had been or should be withdrawn from service. There were also eliminated items for interest, taxes during construction, and other organization expenses. A transfer of certain property from a profitable electric department to an unprofitable steam department had also been ordered.

The court recognized the power of the commission to annex conditions to a consent, but it pointed out that the conditions prescribed in no way related to the terms of the contract under which the property was to be acquired but dealt entirely with the entries to be made upon the books of the purchasing company. The court denied any plenary power in the commission to annex any conditions it might see fit to its consent. The court continued:

> The order of the commission fails to comply in many respects with the decision in New York Edison Co. *v.* Maltbie (1936), 271 N. Y. 103, 15 P.U.R.(N.S.) 143, 2 N. E. (2d) 277. That case dealt with the "independent power" as that term is used in the Iroquois Gas Corp. Case, *supra*, of the commission to make rules and regulations. It was there determined (question 2) that the commission had no power to direct corporations to rewrite their operating property (fixed capital) accounts upon the basis of "original cost," and (question 3) no power to direct corporations to transfer the excess of "book cost" over what it determined to be "original cost" to a suspense account and (question 5) no power to require a corporation to adopt a "straight-line" method of accounting for depreciation and, (question 6) no power to require a corporation to write off "capital stock expense" as shown by commission's account 142, "which includes all expenses in connection with the issuance and sale of capital stock." The orders under review do each of these inhibited things. The commission would have "independent" power to require this purchaser to make book entries showing the price which it paid for this property. New York State Electric & Gas Corp. *v.* Maltbie (1935) 243 App. Div. 655, 277 N. Y. Supp. 751; appeal denied, 267 N. Y. xxxix. The power of the commission was not increased through the acceptance of the conditional order by the vice presidents of petitioners. Property and constitutional rights could not be destroyed, abrogated, or waived by the corporate officials.

As to the direction that entries representing certain properties be transferred from one department to the other, it was said that the commission might have power to allocate the entries between departments, but in this case if book value were to be used in fixing a rate base for temporary rates, this property, which was used and useful in part, at least, in the electric department, should not be excluded by an arbitrary entry from the property upon which a return was to be had. *Lockport Light, Heat & Power Co. et al. v. Maltbie et al. 12 N. Y. Supp. (2d) 595.*

Cost of Wiring for Ranges Not Chargeable to All Customers

THE Massachusetts commission has ruled that the cost of installing heavy-duty wires in private houses to furnish current to electric ranges should not be charged off in rates to all consumers, since these installations serve electric ranges for a limited number of customers.

The utility company had sought to add to its capitalization about $350,000 which it claimed to have spent in installing heavy-duty wires to promote the sale of electric ranges. The money spent for this purpose will have to be charged off to merchandising costs of selling appliances so that it will come out of income instead of being made up by a general increase in rates which would affect all customers.

The commission said that it was not persuaded that all electric companies were prepared for or desirous of assuming the financial or legal responsibilities involved in extending electrical equipment beyond the outside walls of the building of another. The commission entertained

grave doubts of its legal power to enunciate and enforce such a rule. The discriminatory effect upon the larger number of customers who do not require extensions of service might also be advanced, said the commission, as justification for dismissing the petition. *Re Brockton Edison Co. (D.P.U. 5802).*

Federal Power Commission Refuses to Disclaim Jurisdiction

THE Connecticut River Power Company, a New Hampshire corporation, Bellows Falls Hydro-Electric Corporation, a Vermont corporation, and New England Power Company, a Massachusetts corporation, were denied an order of the Federal Power Commission for a declaratory determination by the commission disclaiming jurisdiction over property transfers by the first two companies to the latter. All of the companies are subsidiaries of a holding company and none of them has been granted a general exemption under the Public Utility Holding Company Act.

Both companies proposed to sell certain facilities subject to the jurisdiction of the Federal commission to the New England Company. These facilities included a hydroelectric generating plant on or near the Connecticut river, which the commission described as navigable and subject to Federal jurisdiction. The commission said that a hydroelectric plant might affect the interests of interstate and foreign commerce and might alter or modify the course, condition, or capacity of navigable waters of the United States. A dam at this plant, said the commission, might have been constructed or reconstructed in violation of § 9 of the Rivers and Harbors Act of 1899. The plant might create an obstruction to the navigable capacity of water of the United States in violation of § 10 of that act. The operation and maintenance of the plant might constitute a violation of § 23(b) of the Federal Power Act. An order requiring the licensing of the plant under the Federal Power Act or otherwise pertaining to the construction, operation, maintenance, sale, or acquisition thereof, might be appropriate or expedient in the public interest. The commission concluded:

> Each of the aforesaid proposed acquisitions of facilities by the New England Company will constitute a merger or consolidation of its facilities which are subject to the jurisdiction of this commission with facilities of another person, within the meaning and subject to the requirements of § 203(a) of the Federal Power Act, and the said New England Company is not relieved from such requirements by any other statutory provision if it is exempt from the requirements of § 9(a) of the Public Utility Holding Company Act of 1935 by the provisions of § 9(b) (1) of the latter act; . . .

Re Connecticut River Power Co. et al. (Docket No. IT-5552).

Financial Condition of Company Prevents Authorization of Bond Issue

AN application by a telephone company for authority to issue first mortgage bonds to secure funds with which to refund short-term notes payable and to provide for additions to plant, including the metallizing of its lines, was denied by the Wisconsin commission on the ground that the financial condition of the company did not warrant favorable commission action. The commission had denied authority to issue securities on four previous occasions for the same reason.

The commission reviewed the requirements for approval of security issues in the following words:

One of the statutory requirements is that "the amount of securities of each class which any public service corporation may issue shall bear a reasonable proportion to each other and to the value of the property, due consideration being given to the nature of the business of the corporation, its credit and prospects, the possibility that the value of the property may change from time to time, the effect which such issue will have upon the management and operation of the corporation by reason of the relative amount of financial interest which the various classes of stockholders will have in the corporation and other considerations deemed relevant by the commission."

Another provision requires us to find that "the financial condition, plan of operation, and proposed undertakings of the corporation are such as to afford reasonable protection to purchasers of the securities to be issued" before a certificate of authority may be issued. All of the statutory provisions indicate clearly that the law requires us to see to it that public utilities follow sound principles of finance to the end that the investor is given reasonable protection. While the needs of a corporation for additional funds may be clear, we cannot grant authority to issue securities unless the corporation can satisfy the requirements of the statute.

The commission pointed out the fact that the applicant had authority to issue additional common stock, and it was suggested that if this stock were sold for cash and the proceeds applied as far as possible to the payment of its floating debt, the company would be relieved of the annual interest charge and the earnings available to the stockholders would be increased. The interests of the stockholder, the management, and the creditors would thereby be benefited and the financial condition of the company improved. *Re Nelson Telephone Co. (2-SB-130).*

Municipal Plant Acquisition under Indiana Statutes

THE Indiana Supreme Court affirmed an interlocutory order appointing appraisers in an action by the city of Boonville to condemn and acquire property of the Southern Indiana Gas & Electric Company. The court overruled objections of the utility company and discussed the operation of the Indiana statutes relating to such proceedings.

The petition requesting the municipality to purchase the property was held to be sufficient, the court holding that the words "purchase" and "condemn" both relate to a similar transaction and that it is of no consequence that one or the other term is used.

The court also refused to assume, in the absence of evidence, that the lower court had appointed unqualified or incompetent persons as appraisers. The general eminent domain statute providing for a determination of value by three disinterested freeholders, followed by a court trial with the right of appeal, was held to satisfy the requirements for due process of law. Moreover, the power of eminent domain, an attribute of sovereignty, the court held, could not be surrendered, and if attempted to be contracted away, might be resumed at will.

The obligation of the contract created by the surrender of a franchise and the acceptance of an indeterminate permit, the court held, had not been impaired by a change in the statutory provisions whereby the necessity of purchase was to be determined by the municipal common council instead of the courts, and the compensation to be fixed by disinterested freeholders instead of by the commission. *Southern Indiana Gas & Electric Co. et al. v. Boonville, 20 N. E. (2d) 648.*

Rates Established for Electric Street Lighting Service

As a result of the failure of an electric utility and county commissioners to come to an agreement on rates, following expiration of yearly contracts,

the Maryland commission was called upon to establish new rates for street lighting service in Baltimore county outside of the city of Baltimore. The commission indicated that it approved the method of fixing rates for such special services by negotiation between the parties, stating that such agreements would be based upon experience and a general knowledge of costs and conditions. The commission continued:

> When, however, the two parties to be satisfied in the making of a contract rate cannot agree, the contract plan becomes inoperative and the commission must establish a rate for that service. In such a case the commission welcomes all data and discussion which may throw any light upon the determination of reasonable rates . . .

Only two sizes of lamps were in use in this territory, and the commission prescribed one rate only for each size of lamp instead of adopting the prior classification which embraced a rate for regular and for three or more spans, another rate for inserts, and other rates for one-span and two-span lights, respectively.

Owing to the greater density of lamps in the section of the county adjacent to Baltimore city and to other differences in the conditions of service in that section as distinguished from the more outlying sections of the county, the commission felt that it would be proper to have two rate zones, one to include the area within 3 miles of the city boundary, and the other to embrace the rest of the county. A somewhat lower rate was fixed for the inner zone. *County Commissioners of Baltimore County v. Consolidated Gas Electric Light & Power Co. of Baltimore (Case No. 3990).*

Subsidiary Held Not to Be Predominantly a Public Utility Operating Company

An application to the SEC for exemption under § 3 (a) (2) of the Public Utility Holding Company Act was denied to the Union Electric Company of Missouri, a subsidiary of the North American Company. Denial was based upon a holding that the subsidiary, owning securities of other companies, is not predominantly a public utility company within the meaning of the statute.

The evidence showed that the aggregate book value of the plants of the subsidiaries was 85 per cent of that of the applicant itself. The operating revenues of the subsidiaries were approximately 36 per cent of those of the applicant. Net operating revenues of the subsidiaries were over 68 per cent of those of the applicant itself. Other items in the financial statement showed that the business of the subsidiaries was a very substantial part of the business of the applicant's whole system. It was said in part:

> The act sets out no specific test or standard for the interpretation of the word "predominantly." The applicant argued that it was "predominantly" an operating company because a major portion of its revenues is derived from its own operations and a major portion of its investment is in its own physical plant. We believe it evident that the question of whether a company is "predominantly" a utility cannot be answered merely by finding that more than half of the company's business is that of an operating company.
>
> We have had occasion to grant exemptions under § 3 (a) (2) at various times, but in most of the cases where applications were granted the percentage of gross operating revenues of the subsidiaries of the respective applicants did not exceed 10 per cent. Although in one case such operating revenues approximated 20 per cent, in no case have we granted an application under this section where the assets or the revenues of the subsidiary have been as large a proportion of the parent as in the present case.

The commission also referred to the fact that, unlike the situation in some cases where exemptions have been granted, the present applicant did not own all of the securities of its subsidiaries. Public ownership of subsidiaries' securities, said the commission, makes it all the more essential that the parent company, which by ownership of equity

securities actively controls and manages these subsidiaries, should be subject to regulation as a holding company.

The mere fact that the applicant might now be subject to many of the sections of the act as a subsidiary of a registered holding company did not, in the opinion of the commission, empower it to grant an exemption unless the company came within those provisions authorizing exemptions.

The applicant urged that the close interrelationship between itself and its subsidiary companies, and the fact that its subsidiaries were separately incorporated only because of an Illinois statute requiring the utility companies to be incorporated locally, indicated that the corporate fiction should be disregarded and that the subsidiaries should be considered in effect merely departments of the Union Electric Company of Missouri. The commission refused to accede to this proposition, stating:

> Generally speaking, the applicant is not liable for the debts or other obligations of the subsidiaries, and they are financed in part through the issue of their own securities. The applicant has obtained such privileges as limited liability and separate regulation by the respective states of incorporation and should not expect to obtain the advantages which it might possess if it directly conducted its entire business. Accordingly we are of the opinion that the assertion that the subsidiaries are mere departments of the parent is without merit and that we must consider the subsidiaries as corporations in their own right.

Interpretation of the act was discussed at length, and the conclusion was reached that the construction urged by the applicant was neither the literal meaning of the language of the act nor the meaning which would ordinarily be associated with its language. Physical interconnections of a holding company and its subsidiaries and the reasons underlying separate incorporation were not found to be statutory criteria for exemption. *Re Union Electric Co. of Missouri (File No. 31-389, Release No. 1621).*

Other Important Rulings

THE Pennsylvania commission, which in 25 P.U.R.(N.S.) 265 had asserted jurisdiction over rates of a public utility corporation operating a municipally owned gas plant, held that in view of an amendment of the Public Utility Law in March of this year the commission had been deprived of such jurisdiction. Therefore its earlier order denying a motion to dismiss a complaint against rates was rescinded and the complaint was dismissed. *Jaspan v. The Philadelphia Gas Works Co. (Complaint Docket No. 11583).*

The Pennsylvania commission granted approval of purchase and sale of capital stock of a mutual service company as between operating public utilities incidental to a larger servicing arrangement which had been approved by the Securities and Exchange Commission with the distinct understanding that such approval was not to be construed as impliedly approving also the contracts for services between the petitioners and the service company. *Re Pennsylvania Power Co. et al. (Application Docket Nos. 57148-57150).*

The Wisconsin commission authorized an increase in rates of a telephone company contingent upon submission of proof that necessary replacements and improvements to supply satisfactory service consistent with the standards established by the commission had been made, where subscribers objected to the increase because of the poor condition of the company's lines and service. *Re Hudson Prairie Telephone Co. (2-U-1450).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

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Points of Special Interest

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TITLES

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UNITED STATES SUPREME COURT

American Toll Bridge Company

v.

Railroad Commission of California et al.

[No. 704.]

(— U. S. —, 83 L. ed. —, 59 S. Ct. 948.)

Appeal and review, § 27 — Scope of review — Supreme Court — Impairment of contract.

1. The Supreme Court, in determining whether an order of a state Commission establishing bridge tolls is repugnant to the contract clause of the Federal Constitution, will decide for itself whether a bridge franchise by contract limits exertion of sovereign powers to regulate tolls, although inclining to a construction by the highest court of the state in its decision upholding the order, p. 67.

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2. The fact that earlier legislation relating to bridge tolls indicated adoption by the state of a policy of safeguarding operators of toll bridges against rate reduction by county boards below specified levels may not be employed to arrive at a construction of a later statute not indicated by the language used, p. 67.

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4. A bridge company is not denied a full and fair hearing as the basis for a Commission order reducing toll rates when the Commission gives notice that it will investigate such rates, accords the company an opportunity to introduce evidence and present its contentions, receives the evidence, and after submission of the case for decision (without a company request for findings and without argument) files its decision indicating the facts on which it made the order, following which the company petitions for rehearing but does not claim that the Commission has denied procedural due process, p. 69.

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Rates, § 194 — Unit for rate making — Toll bridges.

6. Exclusion by the Commission, in a toll bridge rate investigation, of bridge rates at another bridge commonly owned and limitation of the investigation to tolls at the one bridge was not an abuse of discretion, and such exclusion was not a denial of procedural due process, p. 70.

Return, § 63 — Confiscation — Burden of proof.

7. The burden is upon a bridge company to show that enforcement of a Commission order reducing bridge tolls will compel it to furnish the service covered by the reduced rates for less than a reasonable rate of return on the value of the property used, at the time it is being used, for that service; and in the absence of clear and convincing proof that reduced tolls are too low to yield that return, it may not be adjudged that the state by enforcement of the measure complained of will deprive the company of its property without due process of law, p. 71.

Return, § 72 — Reasonableness as a whole — Bridge tolls — Classes of service — Failure of proof — Confiscation.

8. A bridge company which fails to establish, by allocation or apportionment to the traffic covered by bridge tolls reduced by Commission order, the operating expenses, cost of depreciation, taxes, and contributions to the sinking fund for amortization of investment that are fairly attributable to the service covered by the order, and which fails to establish the amount of property value that is justly assignable to that traffic, does not meet the burden of proving that the rate order is confiscatory, p. 72.

Return, § 72 — Reasonableness as a whole — Classes of service — Bridge tolls.

9. Inadequacy of revenues from all traffic over a toll bridge does not tend to show that the rates on automobiles and persons prescribed by a Commission rate order are too low, p. 72.

[June 5, 1939.]

APPEAL *from judgment of California Supreme Court sustaining an order of the state Commission which reduced tolls for use of appellant's bridge; affirmed. For lower court decision, see 12 Cal. (2d) 184, 83 P. (2d) 1.*

APPEARANCES: Max Thelen, of San Francisco, California, argued the cause for appellant; Ira H. Rowell, of San Francisco, California, argued the cause for appellees.

Mr. Justice BUTLER delivered the opinion of the court: This appeal is from a judgment of the highest court of the state upholding an order of the state Railroad Commission that reduces tolls for use of appellant's bridge across the Carquinez Straits between the counties of Contra Costa and Solano. Appellant contends that the order violates Art. I, § 10, of the Constitution; that the Commission's procedure was repugnant to the due process clause of the Fourteenth Amendment, and that the order, in violation of that clause, prescribes rates that are confiscatory.

February 5, 1923, the board of supervisors of Contra Costa county, ex-

erting power conferred by state legislation,[1] passed ordinance No. 171 granting to the Rodeo-Vallejo Ferry Company a franchise to construct and for twenty-five years to operate the Carquinez bridge. June 4, 1923, the same board granted to the Delta Bridge Corporation a like franchise for the construction and operation of a bridge across the San Joaquin river near Antioch, between the counties of Contra Costa and Sacramento. Each ordinance provides that, on the expiration of the franchise, the property rights, including title to the bridge, revert to the adjacent counties. Appellant became the owner of both franchises. The Antioch bridge was opened in January, 1926, and the Carquinez in May, 1927.

When the Carquinez bridge opened, the board of supervisors fixed tolls at 60 cents for automobiles and 10 cents for each person in a vehicle or on foot.[2] That scale was in operation when the Commission made the order in question which reduced these charges to 45 and 5 cents, respectively. Jurisdiction over toll bridges having been conferred upon it by a statute of 1937,[3] the Commission in August of that year on its own motion commenced an investigation of all toll bridges. But, in October following, it commenced a separate proceeding solely to investigate reasonableness of Carquinez tolls. February 8, 1938, it announced its opinion and promulgated the order in question. Appellant obtained judicial review; the court upheld the order. 12 Cal. (2d) 184, 83 P. (2d) 1.

[1–3] The statutory provisions authorizing the county board to grant the franchises, ordinance No. 171, and the grantees' acceptance constitute a contract between the parties. Contra Costa v. American Toll Bridge Co. (1937) 10 Cal. (2d) 359, 74 P. (2d) 749. As to that, there is no controversy. But appellant contends that under the franchise it has a contract right that the bridge tolls shall not be reduced by the public authorities unless it shall first appear that they are yielding a rate in excess of 15 per cent upon the rate base specified by §§ 2845 and 2846, Political Code.

These sections provide:

§ 2845. "The board of supervisors granting authority to construct a toll bridge . . . must at the same time: . . .

"2. Fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than $3 nor over $100 per month, payable annually.

"3. Fix the rate of tolls which may be collected for crossing the bridge . . . which must not raise annually an income exceeding 15 per cent on the actual cost of the construction or erection and maintenance of the bridge . . . for the first year, nor on the fair cash value together with the repairs and maintenance thereof for any succeeding year; . . ."[4]

[1] Political Code, §§ 2843, 2845, 2846, and 2872 (as amended May 8, 1923, Cal. Stat. 1923, p. 272).

[2] The franchise ordinance fixed these tolls at 75 cents and 15 cents.

[3] Act of August 27, 1937, Cal. Stat. 1937, p. 2473.

[4] By Act of May 9, 1923, Par. 3 was amended to read as follows: Fix the rate of tolls which may be collected for crossing the bridge . . . which may raise annually an income not exceeding 15 per cent on the actual cost of the construction or erection of the bridge . . . and such additional income as will provide for the annual cost of operation, maintenance, amortization, and taxes of the bridge. . . ." Cal. Stat. 1923, p. 288.

§ 2846. "The license tax and rate of toll fixed as provided in the preceding section must not be increased or diminished during the term of twenty years, at any time, unless it is shown to the satisfaction of the board of supervisors that the receipts from tolls in any one year is disproportionate to the cost of construction or erection, or the fair cash value thereof, together with the cost of all necessary repairs and maintenance of the bridge. . . . The license tax fixed by the board of supervisors must not exceed 10 per cent of the tolls annually collected."

The state court held that § 2846 contemplates increases as well as reductions, limited by the 15 per cent maximum, at any time the disproportion is shown to exist. It construed the language of that section to be inconsistent with the intent to contract that appellant shall have a 15 per cent return, if yielded by the tolls specified in the franchise. The opinion explains that: "Rather it is to be assumed that the legislature intended, not only to afford an adequate and proportionate return to the grantee, but that it also intended some measure of protection to the public's right to be charged not more than a reasonable toll for the use of the bridge. . . . In 1872, when § 2846 was enacted by the legislature, sufficient scope was allowed between both interests, public and private, to permit adequate elasticity in the exercise of the legislative rate-making function in the light of prevailing economic conditions. Such a statute does not savor of a contract obligation to the grantee. Its object was to delegate to and vest in the designated body the power to regulate tolls as circumscribed by the stated limitation." *Supra,* at p. 195 of 12 Cal. (2d).

Upon the issue whether the order is repugnant to the contract clause, "No state shall . . . pass any . . . law impairing the obligation of contracts," this court, while inclining to the state court's construction, will decide for itself whether, as claimed by appellant, the franchise by contract limits exertion of sovereign powers to regulate tolls. Georgia R. & Power Co. v. Decatur, 262 U. S. 432, 438, 67 L. ed. 1065, 1073, P.U.R.1923E, 387, 43 S. Ct. 613; New York Rapid Transit Corp. v. New York (1938) 303 U. S. 573, 593, 82 L. ed. 1024, 1038, 58 S. Ct. 721. And, if it plainly appears that it does, this court will not hesitate so to adjudge. Detroit United R. Co. v. Michigan (1916) 242 U. S. 238, 251–253, 61 L. ed. 268, 274, 275, P.U.R.1917B, 1010, 37 S. Ct. 87; Cleveland v. Cleveland City R. Co. (1904) 194 U. S. 517, 524, 536, 48 L. ed. 1102, 1103, 1108, 24 S. Ct. 756; Detroit v. Detroit Citizens' Street R. Co. (1902) 184 U. S. 368, 382, 389, 46 L. ed. 592, 605, 608, 22 S. Ct. 410; St. Cloud Pub. Service Co. v. St. Cloud (1924) 265 U. S. 352, 68 L. ed. 1050, 44 S. Ct. 492. Compare Georgia v. Chattanooga (1924) 264 U. S. 472, 480, 68 L. ed. 796, 799, 44 S. Ct. 369.

Upon an elaborate review of the California legislation relating to bridge tolls, appellant says that in the first period, 1850 to 1857, bridge franchises allowed owners to take only such tolls as the courts of sessions and, later, the county boards should fix annually; that in the second period, 1857 to 1864, tolls were limited to those fixed by county boards

annually, subject to change by the legislature; that in the third period, 1862 to 1872, general statutes and special acts authorized such rates as the county boards should annually prescribe, declaring, however, that they should not be so low as to make income less than a specified percentage of a defined base. On that foundation, it maintains that there was an evolution of policy to grant to builders and operators of bridges contract rights as to tolls. In that light it examines the language of §§ 2845 and 2846 and concludes that the proper construction of the franchise in question is that unless the yield becomes in excess of 15 per cent the license tax must not be increased and the rate of toll must not be diminished.

We assume, without detailed examination, that the legislation so portrayed indicates that in the period next preceding 1872, when the provisions of § 2846 were enacted, the state had adopted the policy of safeguarding operators of toll bridges against rate reduction by county boards below specified levels. But that fact may not be employed to arrive at a construction not indicated by the language used. So far as concerns the point under consideration, the meaning of the statutory provision is plain. Section 2845 requires the county board, when granting the franchise, to fix the license tax within specified limits and a rate of toll, which must not raise annually an income exceeding 15 per cent of base. Section 2846 declares that the license tax and the rate of toll so fixed must not be diminished unless receipts are disproportionate to base. Thus plainly the commands are that at first the tolls must be fixed, but not to produce income above the 15 per cent specified, and that the tolls so fixed shall not be diminished unless yield is disproportionate to the defined base. Neither in text nor in reason is the "15 per cent" prescribed as maximum yield tied to, or made the test by which to ascertain whether receipts from tolls are, "disproportionate." We construe these statutory provisions to negative appellant's claim that by the franchise in question the state bargained away power to reduce tolls for use of the Carquinez bridge unless annual return becomes more than 15 per cent. See e. g., Paducah v. Paducah R. Co. 261 U. S. 267, 275, 67 L. ed. 647, 651, P.U.R.1923C, 309, 43 S. Ct. 335; Banton v. Belt Line R. Corp. (1925) 268 U. S. 413, 417–419, 69 L. ed. 1020, 1024, 1025, P.U.R.1926A, 317, 45 S. Ct. 534; California R. Commission v. Los Angeles R. Corp. (1929) 280 U. S. 145, 152, 155, 74 L. ed. 234, 308, 326, P.U.R.1930A, 1, 50 S. Ct. 71. The order is not repugnant to the contract clause.

[4] Appellant claims that, in violation of the due process clause of the Fourteenth Amendment, the Commission denied it a full and fair hearing and failed adequately to find the facts. The Commission initiated the proceeding, entitled "In the matter of the investigation upon the Commission's own motion, into the rates, charges, contracts, classifications, rules, and regulations of American Toll Bridge Company covering its operation of the toll bridge over the Carquinez straits between the counties of Contra Costa and Solano"; gave appellant notice that the investigation would extend to tolls for use of that bridge; accorded

it opportunity to introduce evidence and present its contentions; and received the evidence offered by it, 233 pages of the printed record and numerous exhibits. Appellant submitted the case for decision without making any request for findings and without argument, oral or written. The Commission, without formal findings, filed its decision which, sufficiently to meet requirements of due process, indicates the facts on which it made the order.

Then appellant filed petition for rehearing. That document, including 8 captions and 12 subcaptions and an exhibit, occupies 39 printed pages of the record.[5] It specifically sets forth the grounds on which appellant claimed the decision to be unlawful. These include the Commission's determination of the various classes of facts usually considered in cases in which prescribed rates are challenged as confiscatory. The petition contains no hint of claim that the Commission denied appellant procedural due process. Nor was that specified in the petition for judicial review. Morgan v. United States (1938) 304 U. S. 1, 23, 82 L. ed. 1129, 1135, 23 P.U.R. (N.S.) 339, 346, 58 S. Ct. 773, 999, on which appellant relies, was decided after filing of that petition and before argument in the California court. That court rightly held it not in point.

[5, 6] Appellant also claims that the Commission denied it procedural due process by excluding the Antioch bridge rates from the proceeding. It moved to include with this proceeding an investigation of the Antioch bridge tolls. In support of the motion, it suggested that the bridges are part of a single system but compete with each other; that operations of the Antioch are less satisfactory financially than those of the Carquinez; and that reduction of Carquinez tolls would force reduction of Antioch tolls.

In the first instance, at least, de-

[5] I. Introduction.
II. Exclusion of Antioch Bridge.
1. The Facts.
2. Inevitable Effect of Decision on Tolls of Carquinez Bridge, Antioch Bridge and Martinez-Benicio Ferry.
3. The Decision Is Contrary to the Commission's Own Traditions and Policy.
4. The Commission's Action Deprives American Toll Bridge Company of Its Property without Due Process of Law in Violation of Guaranties of the Federal and the State Constitutions.
III. Failure to Give Fair Return on Fair Value of Carquinez Bridge.
1. Calculations of Commission in Computing Its Rate.
2. Errors in Commission's Computations.
(1) Rate Base.
(2) Money Available for Return on Rate Base (under 50 cents toll).
3. Return under Rate Fixed by Commission.
4. In View of the Cost of Money to American Toll Bridge Company, a Return of Only 6.6 per cent or 6.9 Per Cent on the Fair Value of the Carquinez Bridge Would be Confiscatory.
5. Summary As to Fair Return, Carquinez Bridge.
IV. Failure to Give Fair Return on Fair Value of Carquinez and Antioch Bridges.
1. Rate base.
2. Return under Rate Fixed by Commission.
3. Effect of Commission's Decision Would Be to Confiscate Property of American Toll Bridge Company in Both Carquinez and Antioch Bridges.
V. Under Commission's Tolls American Bridge Company Would be Unable to Meet Its Requirements to Its Bondholders and Stockholders.
VI. Impairment of Contract Obligations.
VII. False Analogy with Publicly Owned and Operated San Francisco Bay Bridges.
VIII. Violation of Constitutional and Statutory Rights.

termination of the proper unit for rate making was for the Commission. The Antioch bridge is not used or useful to render any service covered by the Carquinez tolls; appellant's duty to operate either bridge is independent of its obligation to operate the other. The record discloses no basis on which it reasonably may be held that by limiting the investigation to the Carquinez tolls the Commission abused its discretion, and clearly there is no foundation for the claim that in excluding the Antioch the Commission denied appellant procedural due process. See Gilchrist v. Interborough Rapid Transit Co. 279 U. S. 159, 206, 209, 73 L. ed. 652, 663, 664, P.U.R. 1929B, 434, 49 S. Ct. 282; Wabash Valley Electric Co. v. Young, 287 U. S. 488, 495–498, 77 L. ed. 447, 452–454, P.U.R.1933A, 433, 53 S. Ct. 234; Florida Power & Light Co. v. Miami (1938) 98 F. (2d) 180, 25 P.U.R.(N.S.) 321; International R. Co. v. Prendergast (1932) 1 F. Supp. 623, 1 P.U.R.(N.S.) 397. Cf. Coney v. Broad River Power Co. (1933) 171 S. C. 377, 1 P.U.R.(N.S.) 439, 172 S. E. 437.

There is no foundation for the claim that the Commission's procedure violated the due process clause of the Fourteenth Amendment.

[7] There remains for consideration the contention that the prescribed rates are confiscatory. The burden is on appellant to show that enforcement of the order will compel it to furnish the service covered by the reduced rates for less than a reasonable rate of return on the value of the property used, at the time it is being used, for that service. And, in the absence of clear and convincing proof that the reduced tolls are too low to yield that return, it may not be adjudged that the state by enforcement of the measure complained of will deprive appellant of its property without due process of law. Chicago & G. T. R. Co. v. Wellman (1892) 143 U. S. 339, 344, 345, 36 L. ed. 176, 179, 180, 12 S. Ct. 400; San Diego Land & Town Co. v. Jasper (1903) 189 U. S. 439, 441, 446, 47 L. ed. 892, 894, 896, 23 S. Ct. 571; Knoxville v. Knoxville Water Co. (1909) 212 U. S. 1, 8, 16, 53 L. ed. 371, 378, 381, 29 S. Ct. 148; Minnesota Rate Cases (Simpson v. Shepard) (1913) 230 U. S. 352, 433, 452, 57 L. ed. 1511, 1555, 1563, 33 S. Ct. 729, 48 L.R.A.(N.S.) 1151, Ann. Cas. 1916A, 18; Brush Electric Co. v. Galveston, 262 U. S. 443, 446, 67 L. ed. 1076, 1077, P.U.R.1923D, 573, 43 S. Ct. 606; Ætna Insurance Co. v. Hyde (1928) 275 U. S. 440, 448, 72 L. ed. 357, 364, 48 S. Ct. 174.

The terms of the order must first be given attention. It directs appellant to change the items of its schedule of charges, reading as follows: "Passengers (seven years of age and older) on foot or in vehicles . . . $.10. Auto only . . . .60" so as to read: "Passengers (seven years of age and older) on foot or in vehicles . . . .05. Auto only . . . .45." Thus, the order extends only to automobiles and passengers. The Carquinez franchise specifies, until otherwise ordered by the Commission, tolls applicable to other classes of traffic crossing the bridge, namely, bicycles, carts, and wagons, commercial or delivery automobiles and motor trucks, ditchers, harvesters, etc., cattle and stock, motor stages to which commutation rates are applied when

operated as specified, freight, hearses, horses, motorcycles, and trailers.

[8, 9] Appellant fails to establish, by allocation or apportionment to the traffic covered by the tolls so reduced, the operating expenses, cost of depreciation, taxes, and contributions to the sinking fund for amortization of investment that are fairly attributable to the service covered by the order; it also fails to establish the amount of property value that is justly assignable to that traffic. Obviously, the return to be yielded by the reduced tolls cannot be found without comparison of the revenues to be derived from the service with the amounts of operating expenses and other charges rightly to be made against them. Inadequacy of revenues from all traffic does not tend to show that the rates on automobiles and persons prescribed by the Commission's order are too low. Minnesota Rate Cases (Simpson v. Shepard) *supra;* Baltimore & O. R. Co. v. United States (1936) 298 U. S. 349, 372, 378, 381, 80 L. ed. 1209, 1226, 1229, 1230, 56 S. Ct. 797. It follows that appellant is not entitled to a decree that the order is confiscatory.

More need not be written to dispose of the issues presented in this case. But in view of appellant's earnest contentions, it is not inappropriate to say that the record, considered in the light of its argument, fails to show that the rate reduction will so lessen revenues from the Carquinez bridge that there will remain less than sufficient, under the due process clause, to constitute just compensation for its use—a reasonable rate of return on the value of the bridge property.

Judgment affirmed.

Mr. Justice Black, Mr. Justice Frankfurter, and Mr. Justice Douglas concur in the result.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Pennsylvania Power Company

[Application Docket No. 57148.]

Re Shenango Valley Traction Company

[Application Docket No. 57149.]

Re New Castle Electric Street Railway Company

[Application Docket No. 57150.]

Intercorporate relations, § 18.1 — Stock transfers — Servicing company.

Proposed purchase and sale by operating companies of the stock of a

service company, incidental to a larger servicing arrangement which had been approved by the Securities and Exchange Commission and which did not require approval of the state Commission, were approved with the distinct understanding that such approval was not to be construed as impliedly approving also the contracts for services between the utilities and the service company.

[June 12, 1939.]

APPLICATIONS *by public utility corporations for approval of the purchase and sale of stocks of a mutual service company; granted subject to conditions.*

By the COMMISSION: Petitioners (Pennsylvania Power Company, Shenango Valley Traction Company, and New Castle Electric Street Railway Company) are Pennsylvania public utilities and subsidiaries of The Commonwealth & Southern Corporation (of Delaware), hereinafter sometimes referred to as the "holding company," which has registered as a holding company with the Securities and Exchange Commission pursuant to the provisions of the Public Utility Holding Company Act of 1935.

Petitioners receive certain services from The Commonwealth & Southern Corporation (of New York), hereinafter sometimes referred to as the "service company," which has been approved as a mutual nonprofit service company by the Securities and Exchange Commission pursuant to said Public Utility Holding Company Act of 1935. Such services cover the different phases of public utility operations, including executive, financial, accounting, advisory engineering, day-to-day operations, extensions, and betterments to plant, contracts, purchases, taxation, insurance, rates, statistics, public regulation, corporate, organization, relations with employees, statements and reports, development of new business (including merchandising), and special studies and investigations. Such services, or some of them, are also performed by the service company for the other operating and nonoperating subsidiaries of the holding company.

Such services are averred to be performed at cost. The cost of services that can be directly assigned to the individual operating company, for whom the services were rendered, is so assigned. The cost of services that cannot be directly assigned to individual operating companies, but can be assigned to a particular group of such companies, is apportioned among the companies in the group on the basis of their gross operating revenues. The direct cost of services performed for the holding company and for its nonutility subsidiaries will be paid by the holding company, plus an estimate of the portion of the service company's overhead expenses which are applicable to the holding company and to its nonutility subsidiaries. All remaining expenses of the service company will be apportioned among the operating utilities on the basis of their gross operating revenues.

A contract to the foregoing effect has been entered into by each petitioner with the service company, and a copy thereof has been filed with us

pursuant to § 701, of Art. VII, of the Public Utility Law.

Since the service company is to operate primarily for the benefit of the operating utilities, the operating utilities will, and now do, own all the outstanding capital stock of the service company, which consists of 4,500 shares of common, of a par value of $100 a share, or of a total par value of $450,000. And since the operating utilities will bear, in the ratios of their gross operating revenues, all expenses of the service company that cannot be directly assigned to particular utilities, it is planned to have the operating utilities own the stock of the service company approximately in the ratio of their gross operating revenues. This will be accomplished by the operating utilities buying and selling shares of stock among themselves, from time to time as their gross operating revenues fluctuate. The stock will be purchased and sold at par value, unless the par value at the time of purchase or sale should be substantially different from the book value of the stock, in which case the stock will be purchased and sold at book value.

Petitioners now propose to adjust their holdings of stock of the service company to the proper ratios. Pennsylvania Power Company proposes to sell 6 of the 129 shares that it owns. On the other hand, Shenango Valley Traction Company and New Castle Electric Street Railway Company propose to purchase three and four shares, respectively. In each case the stock will be sold or purchased at the par value thereof ($100 a share), since the par value is not substantially different from the book value of $104.30 (as of February 28, 1939).

Our approval of said sale and purchase is asked here pursuant to § 702 of Art. VII of the Public Utility Law, which requires our approval of certain kinds of contracts between public utilities and their affiliated interests. We are further asked to approve the purchase and sale from time to time of additional shares of the stock of the service company, provided that purchases and sales in any one calendar year shall not exceed 25 shares in the case of Pennsylvania Power Company and 5 shares in the case of each of the other two petitioners.

The proposed purchases and sales by petitioners of the stock of the service company are only incidental to the larger servicing arrangement which has been approved by the Securities and Exchange Commission, but which does not require our approval. In order, therefore, not to impede the effective operation of a servicing arrangement which has been approved by the Securities and Exchange Commission, we shall approve the proposed purchases and sales by petitioners of the stock of the service company, with the distinct understanding that our approval is not to be construed as impliedly approving also the contracts for services between petitioners and the service company; Therefore,

Now, to wit, June 12, 1939, it is *ordered:* That the sale by Pennsylvania Power Company to some associate company or companies, at $100 a share, of 6 shares of the common capital stock of The Commonwealth & Southern Corporation (of New York), a mutual service company, be and is hereby approved.

It is *further ordered:* That the

purchase by Shenango Valley Traction Company and New Castle Electric Street Railway Company, from some associate company or companies, at $100 a share, of 3 shares and 4 shares, respectively, of the common capital stock of The Commonwealth & Southern Corporation (of New York), a mutual service company, be and is hereby approved.

It is *further ordered:* That the sale and purchase from time to time by Pennsylvania Power Company, Shenango Valley Traction Company, and New Castle Electric Street Railway Company, to and from some associate company or companies, of shares of the common capital stock of The Commonwealth & Southern Corporation (of New York), a mutual service company, be and are hereby approved, subject to the condition that the sale price or the purchase price per share shall be $100 if the par value and the book value of said stock are substantially identical at the date of sale or purchase, otherwise the sale price or the purchase price per share shall be the book value per share; and subject to the further condition that the number of shares purchased and sold in any one calendar year shall not exceed 25 shares by Pennsylvania Power Company, 5 shares by Shenango Valley Traction Company, and 5 shares by New Castle Electric Street Railway Company:

Subject, nevertheless, to the following further conditions:

First: That the approval hereby given is not to be understood as requiring the Commission, in any proceedings that may be brought before it for any purpose, to fix a valuation on said stock equal to the amounts paid therefor by petitioners, or to approve or prescribe rates or fares sufficient to yield a return on any said amounts.

Second: That the approval hereby given is not to be understood as implied approval of the contracts for services entered into by petitioners with The Commonwealth & Southern Corporation (of New York), a mutual service company.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Public Utility Commission

v.

Edison Light & Power Company

[Complaint Docket No. 12697.]

Dividends, § 6 — Restriction on payment — Affiliated interests — Liability for reparation.

1. An electric utility company, admitting refund obligations in a large amount as the result of rate litigation, was not permitted to pay dividends to its parent corporation pending a determination of the amount of refund

obligations, upon the general principle that obligations to consumers are superior to the desire of public utility owners for dividends and also upon the fact of affiliation, p. 78.

Intercorporate relations, § 13 — Intercompany payments — Prevention of bond default.

2. A subsidiary public utility, restricted by Commission order as to dividend payments and payments on account to a parent corporation, was authorized to make a payment on account of indebtedness to the parent corporation in order to provide interest on the parent corporation's bonds, thereby avoiding a default, where by reason of the subsidiary's bond holdings the net result of the transaction would be a small payment, p. 78.

Intercorporate relations, § 19 — Intercompany payments — Interest.

Statement that an interest rate of 7 per cent on interaffiliate indebtedness appears excessive in the case of a public utility allowed a fair return of 6 per cent, p. 78.

[May 23, 1939.]

PROCEEDING *to determine necessity for issuance of order prohibiting declaration or payment of dividends and payments on account of indebtedness to affiliated companies; payment of dividends prohibited and payments on account authorized subject to conditions. See also 26 P.U.R.(N.S.) 422.*

By the COMMISSION: By our order of April 25, 1939, we instituted this proceeding for the purpose of determining the necessity for issuance of an order prohibiting the declaration or payment of dividends by Edison Light and Power Company (hereinafter usually referred to as Edison) and any payment by the said public utility on account of indebtedness to its affiliated companies. Respondent has filed an answer and hearing has been had, at which testimony was submitted on behalf of the Commission and respondent.

Pursuant to the provisions of our order of April 26, 1938, in Public Utility Commission v. Edison Light & P. Co. 26 P.U.R.(N.S.) 422, respondent advised the Commission on or about April 14, 1939, that, at a meeting of the Board of Directors of Edison, to be held on April 27, 1939, it was proposed to declare a dividend on the common stock in the amount of $125,000 to provide necessary funds to pay the June 1, 1939, interest on the bonds of York Railways Company (hereinafter referred to as Railways). Since that communication was received, respondent has advised the Commission that the amount of the dividend, if declared, will be $75,000 instead of $125,000. The record discloses that the balance of $50,000 necessary for payment of the interest on Railways bonds will be obtained by Railways from another wholly owned subsidiary, namely, York Steam Heating Company.

It appears from the record that the financial condition of Edison, as of April 30, 1939, was as follows:

BALANCE SHEET AS OF APRIL 30, 1939

Assets

Acct. No.	Title of Account	Amount
100	Utility plant	$5,245,484.67
111	Investment in affiliated companies	451,832.50
120	Cash	294,582.60
122	Working funds	2,700.00
124	Notes receivable	469.74
125	Accounts receivable	218,612.82
126	Receivables from affiliated companies	81,890.35
131	Materials and supplies	43,651.82
132	Prepayments	3,296.32
142	Preliminary survey and investigation charges	1,989.53
143	Clearing accounts	2,433.32
144	Retirement work in progress	(red) 892.50
146	Other deferred debits	2,549.88
	Total assets and other debits	$6,348,601.05

Liabilities

200	Common capital stock	$1,301,000.00
212	Advances from affiliated companies	*1,066,559.48
222	Accounts payable	25,000.67
223	Payables to affiliated companies	**173,750.16
227	Customers' deposits	14,745.42
228	Taxes accrued	234,451.93
229	Interest accrued	3,275.84
230	Other current and accrued liabilities	5,225.04
250	Reserve for depreciation of utility plant	2,373,369.30
254	Reserve for uncollectible accounts	22,511.74
256	Injuries and damages reserve	33,180.45
265	Contributions in aid of construction	174,809.87
271	Earned surplus	920,721.15
	Total liabilities and other credits	$6,348,601.05

* Advances from affiliated companies

Demand notes—York Railways Company	$1,066,559.48

** 223.2 Accounts payable to affiliated companies:

York Railways Company	$136,357.28
York Steam Heating Company	373.49
York Bus Company	1,003.16
Metropolitan Edison Company	35,436.96
Utility Management Corporation	564.27
Securities Registration Agency	15.00
Total	$173,750.16

It further appears that respondent will be able to meet its admitted refund obligations in the amount of at least $543,000, exclusive of interest, arising from the temporary order issued by the Commission at Public Utility Commission v. Edison Light & P. Co. (1937) 17 Pa. P. U. C. 380, 19 P.U.R.(N.S.) 474, affirmed by the Supreme Court of the United States at Driscoll v. Edison Light & P. Co. (1939) — U. S. —, 83 L. ed. —, 28 P.U.R.(N.S.) 65, 59 S. Ct. 715.

Respondent now owns $537,000 principal amount of Railways bonds held subject to Commission control, and constituting security for the payment of reparations, but testimony presented by respondent indicates that it will be possible to pay reparations in the amount of at least $543,000 without recourse to the bonds. Furthermore, the experience of Edison with reference to all prior rate reductions has been that the reductions have a promotional effect and that the contemplated reduction in gross revenues is not fully realized because of inceased use of electric energy. If the reduction placed in effect for billings after May 1, 1939, is promotional in effect, the position of the company with reference to payment of reparations will be correspondingly improved.

Willis Ramsay and Utility Consumers League of York have filed a complaint (C. 11567), alleging that the rates of respondent have been unjust, unreasonable, excessive, extortionate, and oppressive in the past, and since January 27, 1934. If the computation as to refund obligations on the basis of a $435,000 annual

excess in rate collections is carried back to January 27, 1934, the reparations payable would be $2,238,790, exclusive of interest. However, the Commission has made no determination of this matter, and the amount of reparations to be awarded is, therefore, problematical.

[1] Edison should not be permitted to pay any dividends while its refund obligations on account of collection of excessive rates remain undetermined. The primary responsibility of a utility company is to its consumers, rather than its stockholders, and, therefore, under the circumstances appearing in the instant case, respondent should not be permitted to pay a dividend to Railways in any amount. This finding is based not only upon the general principle that obligations to consumers are superior to the desire of public utility owners for dividends, but also upon the fact of affiliation between Railways and Edison. Transactions between affiliates are always subject to the closest scrutiny by regulatory bodies and should never be permitted where injury to consumers may result.

[2] However, it appears that if the payment of $75,000 to Railways is not permitted, Railways may default on its bonds, which are widely held by the public. We are of the opinion that, if the payment of $75,000 is made, not as a dividend but as a payment on account of the indebtedness of Edison to Railways, the payment may be permitted. The effect of such a payment will, of course, be to reduce the indebtedness by the amount of the payment, and it should be noted that the net result of the transaction will be a payment of only $61,575, since, by virtue of its Railways' bond holdings, Edison will receive an interest payment of $13,425 on June 1, 1939. Even in view of the statement of respondent that it will be possible to provide a fund sufficient to make payment of $543,000 on account of reparation claims not later than February 1, 1940, we believe it to be our duty to prescribe certain safeguards to assure the accumulation of this fund. We will therefore order Edison to preserve at all times a cash fund of at least $75,000 for use as cash working capital. Any cash accumulated in excess of $75,000 shall be held as cash or invested in United States government securities, said cash or securities to be held subject to Commission order as a fund from which reparations may be paid.

We deem it appropriate to state that an interest rate of 7 per cent on interaffiliate indebtedness appears excessive under the circumstances, particularly in the light of the finding by the Supreme Court of the United States that a fair return for Edison is 6 per cent. Respondent states that it will use its best efforts to obtain a reduction of the interest rate and we will expect this promise to be performed; therefore,

Now, to wit, May 23, 1939, it is *ordered:* That payment of dividends by Edison Light & Power Company be and is hereby prohibited until further order of the Commission.

It is *further ordered:* That Edison Light & Power Company be and is hereby permitted to pay $75,000 to York Railways Company, said payment to apply upon the intercorporate indebtedness owing by Edison Light

& Power Company to York Railways Company.

It is *further ordered:* That Edison Light & Power Company shall not dispose of any presently held York Railways Company bonds without Commission approval.

It is *further ordered:* That Edison Light & Power Company shall make no further purchases of York Railways Company bonds nor make further payments on account of its indebtedness to York Railways Company, unless the approval of this Commission shall have been first obtained.

It is *further ordered:* That Edison Light & Power Company may make payments on account of interaffiliate indebtedness other than such indebtedness owed to York Railways Company.

It is *further ordered:* That Edison Light & Power Company preserve at all times a cash fund of at least $75,000 for use as cash working capital. Any cash accumulated in excess of $75,000 shall be held as cash or invested in United States government securities, said cash or securities to be held subject to Commission order as a fund from which reparations may be paid.

It is *further ordered:* That none of the provisions of this order shall relieve Edison Light & Power Company of any obligations under § 702, or any other provision, of the Public Utility Law.

It is *further ordered:* That this proceeding be and is hereby terminated.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Middletown Drainage Company

[Securities Certificate No. 54.]

Security issues, § 99 — Bonds-to-property ratio.

1. A bonds-to-property ratio of about 40 per cent is a satisfactory ratio, p. 81.

Security issues, § 99 — Securities-to-property ratio.

2. A total-securities-to-property ratio of approximately 67 per cent is satisfactory, p. 81.

Security issues, § 49 — Factors affecting approval — Earning capacity.

3. A showing of earning capacity, so as to justify a bond issue, was held to be satisfactory where fixed charges on bonds to be issued, based on net income for preceding years, would range from 2.02 times earned to 3.46 times earned, p. 82.

Security issues, § 44 — Factors affecting approval — Necessity of extension.

4. A proposed extension of sewage disposal facilities, to be financed by a proposed bond issue, was held to be reasonably necessary for the service of the public and not to be a burden on the present patrons of the utility or an

impairment of the financial condition of the utility, where a number of property owners had petitioned for service, where the extension was to be made in advance of contemplated paving, and where the area to be served was likely to develop rapidly, while present revenues alone would be more than sufficient for payment of all reasonable operating expenses and fixed charges on the bonds to be issued to finance the extension, p. 83.

Corporations, § 19 — Meetings — Vote by stockholders — Authorization of bond issue — Stock held by executor.

5. Authorization of a bond issue at a special stockholders' meeting is not illegal because the executor of an estate has waived notice of the meeting and has voted stock left by the decedent in favor of the bond issue within the period for estate settlement although 2 out of 44 shares voted by the executor were specifically bequeathed to others, particularly where the beneficiary of the specific legacy did not protest at the stockholders' meeting, p. 83.

[May 25, 1939.]

APPLICATION *for registration of securities certificate for issuance of bonds; registration of certificate ordered.*

By the COMMISSION: Middletown Drainage Company (hereinafter sometimes referred to as "the utility"), which furnishes sanitary sewage disposal service to the public in the borough of Middletown, Dauphin county, here seeks registration of its securities certificate in the matter of the issuance of $22,000 principal amount of its first mortgage extension 4 per cent bonds, due October 1, 1958. The bonds are to be redeemable, at the option of the company, at face value plus accrued interest, on any interest date beginning October 1, 1943. The Pennsylvania loans tax on the bonds will be paid by the utility to the extent of 8 mills per dollar of taxable value per annum. The bonds will be sold at face value plus accrued interest, and without the intervention of any broker or salesman, to stockholders of the utility and to such members of the general public as may want to purchase them.

The $22,000 to be realized from the sale of the bonds, together with $229 of current funds, will be applied as follows:

For the extension of the utility's sewage disposal facilities to and in East Emaus street, Adelia street, Conewago street, Hoffer street, and East Main street, in the borough of Middletown	$22,024.00
For payment of expenses to be incurred in connection with the issuance of the bonds	205.00
Total	$22,229.00

The new facilities will include 9,280 feet of 8-inch vitrified terra-cotta pipe, a concrete-lined well, an electric pump and associated equipment, and a storage house at the well. The facilities will be installed to give service to a residential section of the borough of Middletown which is in large part undeveloped, but which, in the opinion of the utility, will develop rapidly within the coming five or ten years.

The securities certificate presents the following matters for our consideration: (a) Whether the issuance of securities in the amount, of the character, and for the purpose therein pro-

posed, is necessary or proper for the present and probable future capital needs of the utility; (b) whether the bonds-to-property and the total-securities-to-property ratios are reasonable; (c) whether the probable future earnings of the utility will be adequate for the payment of interest on the bonds proposed to be issued; and (d) whether the protest of John H. Rhodes has merit.

Since the utility does not possess treasury or portfolio assets sufficient in amount for the payment of the cost of the proposed plant extension, or any substantial part thereof, it follows that the issuance of bonds for such payment is necessary or proper for the present and probable future capital needs of the company, provided that the proposed plant extension is necessary or proper for the service, accommodation, convenience, or safety of the public. The question whether the proposed plant extension is necessary in the public interest will be given consideration hereinafter in the discussion of the protest of John H. Rhodes.

[1] With respect to the bonds-to-property ratio, the evidence shows that the depreciated original cost of the utility's physical property presently in place is $33,628.30; that the utility proposes to install additional physical property at an estimated cost of $22,024; that, therefore, the depreciated original cost of the utility's installed physical property, after the proposed additional installation shall have been made, will be approximately $55,000; and that the utility presently has no outstanding funded debt. It is evident from this that after the proposed $22,000 principal amount of bonds shall have been issued, the bonds-to-property ratio will be the ratio of $22,000 to $55,000 (approximately), or about 40 per cent. This is a satisfactory ratio.

[2] The total-securities-to-property ratio also will be satisfactory. Since the utility now has only $15,000 par value of common capital stock outstanding and will issue $22,000 principal amount of bonds, its total outstanding securities will amount to $37,000. The total-securities-to-property ratio therefore will be the ratio of $37,000 to $55,000, or approximately 67 per cent.

We pass now to the important question whether the probable future earnings of the utility will suffice for the payment of the reasonable operating expenses of the utility and fixed charges on the bonds proposed to be issued.

The utility's gross revenue, operating expenses, and net income for each of the four years 1935–1938 are shown in the following table:

	1935	1936	1937	1938
Gross revenue	$6,654.99	$6,771.10	$7,260.00	$6,202.18
Operating expenses	3,414.68	3,500.64	3,605.45	6,722.88
Net income	$3,240.31	$3,270.46	$3,654.55	$520.70*

* Net loss.

The remarkable drop in earnings in the year 1938 was more apparent than real, and can be explained as follows:

1. The company, which keeps its books on a cash basis instead of on a proper accrual basis, changed its method of billing for 1938 from advance billing to post billing, with the result

that approximately $1,000 of revenue earned in the year 1938 has been or will be collected in the year 1939 and has been or will be taken into 1939 accounts. Gross revenues for 1938 as shown in the above table therefore should be increased by approximately $1,000 to reflect the true gross revenue earned.

2. Operating expenses for 1938 include the following extraordinary, nonrecurring expenses: Additional Federal and state taxes assessed for the years 1935, 1936, and 1937, $1,100.83; Federal excess profits tax for 1938 (which will be avoided in the future because a new declared value was established as of June 30, 1938), $353; extraordinary legal and auditing expenses, $200; total extraordinary, nonrecurring expenses, $1,653.83.

3. Operating expenses for 1938 include increases of $1,250 in officers' salaries and $250 in directors' fees, or a total increase of $1,500 in officers' salaries and directors' fees. These increases, the utility's president testified, will not be paid in the future if it should be found necessary to withhold them to meet the fixed charges on the bonds to be issued.

If the Income Account for the year 1938 were adjusted by adding $1,000 to gross revenue and deducting $1,653.83 of extraordinary, nonrecurring expenses from operating expenses, the Income Account would show a net income of $2,133.13 instead of a net loss of $520.70.

[3] Fixed charges on the bonds proposed to be issued will amount to $1,056, as follows: Interest at 4 per cent per annum on $22,000 principal amount of bonds, $880; Pennsylvania corporate loans tax at 8 mills per dollar per annum on $22,000 principal amount of bonds, $176. (In computing the corporate loans tax we assumed that all the bonds will be held locally by others than fiduciary institutions, so that we have assumed the maximum possible loans tax.) It is evident, therefore, that, based on net income for the years 1935–1938, fixed charges on the bonds to be issued will be earned as follows:

Year	Times Earned
1935	3.07
1936	3.09
1937	3.46
1938 (Adjusted)	2.02

This showing, based on past experience, is satisfactory. The evidence shows, however, that the proposed extension of the utility's facilities will immediately produce only between $300 and $400 of additional gross revenue per annum, while the operation thereof will increase operating expenses by a minimum of $600 and a maximum of $1,000 a year. Thus it is expected that the extension will, at first, be operated at a net loss of from $200 to $700 a year, exclusive of a return on investment. It is nevertheless evident that the over-all net income of the utility, even during the first years of operation of the extension, will more than suffice for the payment of reasonable operating expenses and of the fixed charges on the bonds proposed to be issued.

We now come to the protest of John H. Rhodes. The protest recites that it is made in behalf of John H. Rhodes and Charles T. Rhodes, who are brothers; but since Charles T. Rhodes did not sign the protest, did not appear at the hearings, and was

not represented by counsel, the protest must be treated as being made by John H. Rhodes alone, who is a stockholder of the utility.

Protestant avers that the proposed extension of sewage disposal facilities is unnecessary, that it would be unable to pay its own way and therefore would be a burden on the present patrons of the utility and would impair the financial condition of the utility, and that the action of the stockholders in authorizing the issuance of bonds for the payment of the cost of the extension was illegal.

[4] Extension of its facilities was decided upon by the utility upon receipt of a petition for service from the owners of 38 properties. Another reason for the utility's undertaking the extension at this time is that the borough of Middletown plans on paving certain streets in which the extension will be laid. The area to which it is proposed to extend service will develop rapidly within the next few years, and, as hereinbefore pointed out, present revenues alone would be more than sufficient for payment of all the reasonable operating expenses of the utility and the fixed charges on the bonds to be issued to finance the extensions. We therefore conclude that the extension is reasonably necessary for the service of the public, and that it will not be a burden on the present patrons of the utility and will not impair the financial condition of the utility.

[5] Finally, we have to consider protestant's averment as to the illegality of the acts of the stockholders in authorizing the issuance of bonds for the payment of the cost of the proposed extension of sewage disposal facilities. The facts underlying this averment are as follows:

Protestant's father, Dr. H. H. Rhodes of Middletown, died on May 24, 1938. In his will he bequeathed to each of his two sons, John H. Rhodes (protestant) and Charles T. Rhodes, one share of the capital stock of the utility. He also directed that 42 shares of said stock be divided equally for the benefit of his three sons, John, Charles, and William, to be held in trust, however, together with other trust funds, by the Farmers Trust Company of Middletown. Dr. Rhodes in his will appointed Maurice R. Metzger, of counsel for the utility, executor of his estate.

At a special stockholders' meeting held on August 3, 1938, the stockholders of the utility authorized the issuance of bonds for the extension of sewage disposal facilities. Notice of the meeting, according to a recital in the proposed form of mortgage submitted with the securities certificate, was waived in writing by all stockholders. Maurice R. Metzger, as executor of the estate of Dr. Rhodes, voted said 44 shares of stock in favor of the issuance of bonds.

Protestant avers that said recital in the proposed form of mortgage (to the effect that all stockholders had executed waivers of the statutory 60-day notice of the stockholders' meeting) constitutes a misrepresentation of fact, in that the owners of at least two shares of the stock of the utility, namely, John H. and Charles T. Rhodes, who had been directly bequeathed said 2 shares, did not execute waivers of notice. Protestant further avers that the execution by

the executor of the estate of Dr. Rhodes of waivers of notice on behalf of said 2 shares, and the voting by the executor of said 2 shares in favor of the issuance of bonds, were illegal acts because said 2 shares of stock had been bequeathed as specific legacies to protestant and his brother.

In rebuttal of these averments of protestant, the utility in its brief argues as follows:

". . . Dr. Rhodes, a former director of this company, died on May 24, 1938. Maurice R. Metzger was appointed executor of the estate of Dr. H. H. Rhodes and qualified as such executor. Under the law the estate of the said decedent would not be settled within six months. The stock of the Rhodes estate was voted by the executor in favor of the increase of indebtedness within that period of six months. In so doing the executor acted within his rights as defined by the Fiduciaries Act. See 20 P. S. Par. 810, which reads as follows:

" 'Fiduciaries, whether appointed by last will and testament or by decree of the Orphans' court, shall have the same right and power either in person or by proxy, at all corporate meetings to vote any and all shares of stock held by them in a fiduciary capacity, in any corporation organized under the laws of this commonwealth, as the deceased or legal owner thereof had in his lifetime.'

"To the same effect is the Act of March 16, 1905, P. L. 42 (15 P. S. Par. 107). The fact that there was a bequest of only one share to the protestant did not under the preceding authorities give the protestant a right to vote such stock, at least in the absence of a protest at the stockholders meeting by him. No such protest was made."

It appears to us that protestant has failed to show that the authorization of the bond issue is invalid, and we accept the argument of the utility on this point.

The matters and things involved in the securities certificate having been duly heard and fully considered, we find that the issuance of securities in the amount, of the character, and for the purpose therein proposed, is necessary or proper for the present and probable future capital needs of the utility; therefore,

Now, to wit, May 25, 1939, it is *ordered:* That Securities Certificate No. 54, filed by Middletown Drainage Company in the matter of the issuance of $22,000 principal amount of its first mortgage extension 4 per cent bonds, due October 1, 1958, be and is hereby registered.

UTAH PUBLIC SERVICE COMMISSION

Re Uintah Power & Light Company

[Investigation Docket No. 18.]

Valuation, § 1 — Inventory of property.

1. A public utility company, required by order to reclassify its property

on an original cost of construction basis in accordance with a new system of accounts, should in addition to and as an assistance in reclassifying make an accurate inventory of its physical properties in order that the Commission may have available information from which the fair value of the properties can be obtained, p. 86.

Depreciation, § 23 — Engineering studies — Depreciation rates.

2. An electric utility company should make detailed engineering studies of its various classes of depreciable property to determine the depreciation rates that should be used to substantiate its depreciation charges, when the company has been making substantial charges for depreciation expense but has not based its charges on detailed engineering estimates of the property lives or depreciation requirements of the property, p. 86.

Payment, § 53 — Penalty to enforce — Period of delinquency.

3. Tariffs of an electric company should be modified to extend the period for the payment of bills for domestic consumers after they are rendered and before they become delinquent to fifteen days, p. 86.

Payment, § 53 — Penalty for nonpayment — Amount.

4. An electric utility company was required to reduce the penalty for slow payment to 5 per cent, p. 86.

Service, § 123 — Duty to serve — Adequate facilities.

5. An electric company, the requirements of whose customers have continually increased, should direct its energy toward improving the service rendered, by thorough maintenance and by installation of additional equipment, p. 86.

[May 31, 1939.]

INVESTIGATION *of rates and practices of an electric utility company; tariffs revised and utility ordered to make inventory of property and to make studies of depreciation rates.*

By the COMMISSION: On March 24, 1939, the Public Service Commission of Utah advised the Uintah Power and Light Company by letter that an informal investigation of the rates, properties, practices, and operations of the company would be undertaken by the Commission. This investigation has been made, and a written report has been submitted to the Commission by its engineering department containing information obtained as a result of analyzing the company's operations and setting forth recommendations relative to the company.

The Uintah Power and Light Company is the fourth largest electric utility operating in the state of Utah and serves electrical energy to approximately 800 customers in Duchesne and Uintah counties. The company diverts water from the Uintah river and Pole creek for use in generating energy at its hydro plant. Energy generated at this plant is transmitted by the company over approximately 90 miles of 44,000- and 11,000-volt transmission lines to its various customers.

The report submitted to the Commission by its engineering department indicates that the company has excess generating capacity available in its plant and that an increased use of

energy by the company's customers would not materially increase its cost of generation.

The Commission is convinced, as a result of this report and from information contained in its files and records, that it would be in the interests of the public and would not impair the company's operations to order a reduction in certain of its rates and modification of some of its practices. Such rate reductions will probably result in an increased consumption of energy by the company's customers which can be supplied by the company due to its excess generating capacity.

[1] On March 29, 1937, the Commission issued its General Order Number 34, which makes it necessary for this company to reclassify its property on an original cost of construction basis by December 31, 1939, in accordance with the new system of accounts adopted by said order. The Commission is advised that the company does not have an accurate inventory of its properties and that the reclassification, above referred to, has not been satisfactorily completed. The Commission is desirous of having available information from which the fair value of the properties of this company can be obtained, if it is deemed desirable to make such determination. Therefore, the company, in addition to and as an assistance in reclassifying its property, should also make an accurate inventory of its physical properties.

[2] It appears that this company has been making substantial charges during recent years for depreciation expense, but has not based its charges on detailed engineering estimates of the property lives or depreciation requirements of the property. During 1938, such depreciation charges were approximately 20 per cent of the company's gross revenue. Because of the major importance of this expense item, the Commission is of the opinion that the company should make detailed engineering studies of its various classes of depreciable property to determine the depreciation rates that should be used to substantiate its depreciation charges.

[3, 4] During recent months, the Commission has ordered the three larger electric utilities operating in the state to extend the period for the payment of bills for domestic consumers after they are rendered and before they become delinquent to fifteen days and has ordered the penalty for nonpayment of bills in the discount period to be reduced to 5 per cent. The Commission is of the opinion that the tariffs of this company, now on file with the Commission, should be modified in order to make them similar in this respect to the provisions and tariffs of the other large electric companies operating in this state.

[5] It is the opinion of the Commission that the company's first obligation is to furnish adequate and reliable service to the public at the lowest rates consistent with the furnishing of such service. While the company has spent considerable money in improving its generation and its transmission properties, the requirements of the company's customers have continually increased and, therefore, it is the company's responsibility to continue to direct its energies toward improving the service rendered by more thorough maintenance and

by the installation of additional equipment. The Commission is of the opinion that the company should direct some attention toward improving its distribution system properties.

In view of the fact that an inventory of the company's properties is not available, a determination of their fair value has not been made. However, information having a bearing on the value of the company's property indicates that rate reductions should be made in some of the company's schedules pending the completion of the inventory and reclassification above referred to. It is understood by all concerned that when the inventory and reclassification have been completed, that if the facts justify, additional modifications will be ordered by the Commission in the company's rates and practices.

It is therefore *ordered,* that the company shall file with the Commission new schedules containing the following provisions which will effect a reduction of approximately $4,500 in the gross revenue of the company, such schedules to become effective for all meter readings and billings made on and after June 1, 1939:

Schedule No. 1. Residential and Domestic Service

Minimum charge $1.50 including 15 kw. hr.
Next 10 kw. hr. at 10¢
Next 100 kw. hr. at 3½¢
Additional kw. hr. at 2¢

5% added for nonpayment of above net bills if not paid in 15-day period after bill is rendered.

Schedule No. 2. Commercial and Industrial Lighting

Minimum charge $1.50 including 15 kw. hr.
Next 485 kw. hr. at 10¢
All excess kw. hr. at 8¢

Term discounts: 5% for a contract of not less than 5 years; 10% for a contract of not less than 10 years.

5% added for nonpayment of above net bills if not paid in 10-day period after bill is rendered.

Schedule No. 7. Service to Churches

Minimum charge $1.50 per month
4½¢ per kw. hr. for all monthly consumption

Term discount: 10% when contract is for 10 years or longer.

5% added for nonpayment of above net bills if not paid in 15-day period after bill is rendered.

Ordered further that all bills rendered after June 1, 1939, shall grant to domestic and church consumers a period of fifteen days from the date of billing in which to make payment.

Ordered further that all bills rendered after June 1, 1939, shall provide for a penalty for nonpayment within the discount period of 5 per cent in lieu of the present 10 per cent.

Ordered further that the company shall modify its rules and regulations to provide for the kilowatt or horsepower demand under industrial schedules being based on a 15-minute load in lieu of the present 5-minute load.

Ordered further that the company proceed with the utmost dispatch and complete not later than December 31, 1939, an accurate inventory of its physical property used and useful in the service of the public and the reclassification of its accounts in accordance with General Order Number 34.

Ordered further that the company begin immediately to make studies to ascertain proper depreciation rates for its depreciable properties and make the results of such studies available to the Commission not later than December 31, 1939.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

H. Jerome Jaspan

v.

Philadelphia Gas Works Company

[Complaint Docket No. 11583.]

Municipal plants, § 13 — Jurisdiction of Commission — Rates — Facilities leased to operating company.

Rates of a company operating a municipally owned gas plant under lease from the municipality are not subject to the jurisdiction of the Commission under the Public Utility Law, §§ 2(10) and 301 as amended by the Act of March 21, 1939, P. L. ——, (No. 11).

[June 6, 1939.]

REHEARING *on order denying petition to dismiss complaint against rates of corporation operating a municipally owned gas plant; order rescinded and complaint dismissed in view of statutory amendment. For earlier decision, see 25 P.U.R. (N.S.) 265.*

By the COMMISSION: On September 27, 1938, the Pennsylvania Public Utility Commission entered its order denying the respondent's petition to dismiss the complaint in the above-entitled matter for lack of jurisdiction in 25 P.U.R.(N.S.) 265. Our decision was predicated on the definition of the terms "facilities," "service," and "public utility," contained in the Public Utility Law of 1937, as it then read. We pointed out in that order that the definition of the term "facilities" did not exempt municipally owned property, which exemption had appeared in the definition of the same term in The Public Service Company Law of 1913.

On March 21, 1939, §§ 2(10) and 301 of the Public Utility Law were amended: Act of March 21, 1939, P. L. ——, (No. 11). The Commission order of September 27, 1938, *supra,* was based on the Public Utility Law as it then read. Upon the enactment of the amendment, the Commission believed it advisable to grant the parties hearing and argument, under § 1007 of the Public Utility Law, to determine whether or not the amendment affected the jurisdiction of the Commission over respondent. Accordingly, hearing and argument were fixed for June 6, 1939, and proper notice was given all parties. On June 1, 1939, the Commission was notified by the complainant that he waived hearing and argument; and, on June 2, 1939, the respondent notified the Commission that it also waived hearing and argument.

As amended, § 2(10), which de-

fines the term "facilities" is now substantially identical with the definition of the same term in The Public Service Company Law of 1913. Under the prior statute, the superior court, in Ferguson and MacDowell v. Public Service Commission (1923) 82 Pa. Super. Ct. 238, and in Wilson v. Public Service Commission (1935) 116 Pa. Super. Ct. 72, 8 P.U.R. (N.S.) 34, 176 Atl. 510, held that the Commission did not have jurisdiction over the rates of a public service company operating a municipally owned gas plant. Furthermore, the Act of March 21, 1939, P. L. —— (No. 11) also amends § 301 of the Public Utility Law, so that it now reads:

"Section 301. Rates to Be Just and Reasonable. Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the Commission: Provided, that *only* public utility service being furnished or rendered by a municipal corporation *or by the operating agencies of any municipal corporation* beyond its corporate limits shall be subject to regulation and control by the Commission as to rates, with the same force, and in like manner, as if such service were rendered by a public utility." (Italics supplied.)

Therefore, it appears that the Pennsylvania Public Utility Commission is now without jurisdiction to proceed with the complaint filed herein. Although our order of September 27, 1938, *supra,* refusing to dismiss the complaint, was in conformity with the statute as it then read, we are constrained to note the change in the law, and must abide thereby; therefore,

Now, to wit, June 6, 1939, the order of the Pennsylvania Public Utility Commission entered September 27, 1938, *supra,* in the above-entitled matter, be and is hereby rescinded, and the complaint filed therein is hereby dismissed.

OHIO SUPREME COURT

Industrial Gas Company

v.

Public Utilities Commission of Ohio

[No. 27227.]

(— Ohio St. —, 21 N. E. (2d) 166.)

Public utilities, § 14 — Determining factors.

1. Whether a corporation is operating as a public utility is determined by the character of the business in which it is engaged, p. 92.

Discrimination, § 199 — Duty to serve — Service under private contract.

2. A public utility is bound to serve to the extent of its capacity those of the public who need the service and are within the field of its operations, at reasonable rates and without discrimination (§ 614–12 et seq. General Code); this duty does not permit such a public service corporation to pick out good portions of a particular territory, serve only select customers under private contract and refuse service (which it alone can give) to the remaining portions of territory and to other users, p. 92.

Gas, § 3 — Jurisdiction of the Commission.

3. A corporation that furnishes service in the supply and distribution of natural gas to such substantial part of the public as to make its service a matter of public concern, welfare, and interest, subjects itself to regulation by the Public Utilities Commission, p. 93.

Public utilities, § 3 — Divesting of duties.

4. A public utility cannot divest itself of its duties as such (1) by changing the purpose clause of its articles of incorporation, (2) by not exercising the right of eminent domain, (3) by not holding itself out to serve the public or any class of the public generally, or (4) by selling to select consumers by private contract only, p. 93.

[May 17, 1939.]

Headnotes by the COURT.

APPEAL *from order of the Commission denying application of gas company to withdraw its property from service to domestic consumers and to be declared not subject to the jurisdiction of the Commission; affirmed.*

On April 13, 1938, the Industrial Gas Company, relying on §§ 504–2 and 504–3, General Code, as a basis therefor, filed with the Public Utilities Commission of Ohio an application to withdraw its properties from service to domestic users of gas and to be declared not subject to the jurisdiction of the Commission on the ground that it was no longer a public utility and therefore not subject to the control of and regulation by the Commission.

On hearing before the Commission, evidence was adduced to show that in March, 1938, the company's articles of incorporation were amended to read: "For the purpose of producing, acquiring, distributing, and selling natural gas for industrial use, only, and, in connection therewith, acquiring, operating, and disposing of leases and other properties incident thereto."

The evidence further disclosed that the company operates a natural gas transmission system in Muskingum, Licking, Perry, and Morgan counties, Ohio, with its principal place of business at Newark, Ohio, but owns no gas wells. Its properties consist of pipe lines, measuring stations, regulating stations, and certain buildings. The company, operating approximately 50 miles of pipe lines, serves nineteen industrial and twelve private consumers located in Crooksville, Roseville, Zanesville, Newark, and adjacent vicinities, all under written contracts which stipulate the price to be paid for

gas; but the appellant does not hold itself out to serve either the public or the users of industrial gas generally and has refused or failed to agree with, and did not serve certain industrial users of gas in its territory. The twelve private customers have been "given the privilege of buying gas as a part of the grounds for right of way grants" across their property. No proceedings of condemnation have ever been instituted to acquire property or right of way.

This evidence was not rebutted and the facts are not in dispute.

The Commission found that the company was a public utility within the definition of §§ 614–2 and 614–2a, General Code, and denied the application. Thereupon the company appealed to this court.

APPEARANCES: Brewer & Farrell, of Chicago, Ill., J. R. Fitzgibbon, of Newark, and T. M. Potter, of New Lexington, for appellant; Herbert S. Duffy and Thomas J. Herbert, Attorneys General, and W. W. Metcalf and Kenneth L. Sater, both of Columbus, for appellee.

WILLIAMS, J.: Is the appellant, The Industrial Gas Company, a public utility under the undisputed facts? If so, it is subject to regulation and, moreover, the order of the appellee, the Public Utilities Commission, denying release therefrom, must be affirmed.

Under §§ 614–2 (amended 116 Ohio Laws, pt. 2, 309, effective April 5, 1937), 614–2a and 614–3, General Code, a person, partnership, association, or corporation "engaged in the business of supplying natural gas for lighting, *power* or *heating* purposes to consumers within this state" or "in the business of transporting natural gas . . . through pipes or tubing, either wholly or partially within this state" is denominated a public utility and declared subject to regulation. (Italics ours.) These sections are all-embracing in that they attempt to bring within public regulation (among others) all those engaged in such businesses. Appellant contends that it is not a public utility and that any attempt to make it such by legislative fiat is violative of Federal and state Constitutions. However, the constitutional question need not be considered if this court reaches the conclusion that appellant is in reality a public utility.

Regarding the scope of its operations, appellant asserts: "The very nature of appellant's business is not that of a public utility. It has never invoked the power of eminent domain, does not hold itself out to serve the public generally or to any class or division of the public generally; its business is carried on by private contracts and is of such a nature that it is not susceptible of general supervision by the Commission; its charter gives it the right to carry on an industrial business only and the contracts which it does make are in competition with other fuels. Each contract is dependent upon many factors, depending upon the location of the purchaser, the availability to the system, volume of gas used, and various other factors."

Appellant operated as a public utility and submitted to regulation for many years prior to the amendment of the purpose clause of its articles of incorporation. In a former proceeding heard and decided during that period, the Commission denied a pre-

vious application of the appellant for withdrawal from service; then in an action brought to collect the excise tax, penalty, and maintenance fee for the years 1933 and 1934, it was held by the court of appeals of Franklin county, Ohio, that appellant was then operating as a public utility. State ex rel. Bricker v. Industrial Gas Co. (1937) 58 Ohio App. 101, 16 N. E. (2d) 218. Thereafter, on November 17, 1937, a motion to certify the record was overruled by this court.

[1] The change in the purpose clause of the charter does not of itself alter the real character of appellant's business; at any rate the charter as amended permits the continuation of operations in the same way as theretofore except as to service to nonindustrial users. It is what the corporation is doing rather than the purpose clause that determines whether the business has the element of public utility. State ex rel. Buchanan County Power Transmission Co. v. Baker (1928) 320 Mo. 1146, P.U.R.1929A, 106, 9 S. W. (2d) 589; Davis v. People ex rel. Public Utilities Commission, 79 Colo. 642, P.U.R.1926E, 635, 247 Pac. 801; Terminal Taxicab Co. v. Kutz, 241 U. S. 252, 60 L. ed. 984, P.U.R.1916D, 972, 36 S. Ct. 583, Ann. Cas. 1916D, 765.

The appellant with its 50 miles of pipe lines running through four counties supplying nineteen industrial plants with natural gas was rendering a service to a substantial part of the state that would ordinarily be serviced by public utilities under regulatory restrictions.

It may well be urged that a corporation, calculated to compete with public utilities and take away business from them, should be under like regulatory restriction if effective governmental supervision is to be maintained. Actual or potential competition with other corporations whose business is clothed with a public interest is a factor to be considered; otherwise corporations could be organized to operate like appellant and in competition with bona fide utilities until the whole state would be honeycombed with them and public regulation would become a sham and delusion.

What appellant seeks to do is to pick out certain industrial consumers in select territory and serve them under special contracts to the exclusion of all others except such private or domestic consumers as may suit its convenience and advantage. There were other industrial consumers with whom the appellant refused or failed to agree and so did not serve them. If such consumers were served at all, it must necessarily be by a competitor. If a business so carried on may escape public regulation then there would seem to be no valid reason why appellant may not extend the service to double, triple or many times the number now served without being amenable to regulative measures.

[2] A public utility to the extent of its capacity is bound to serve those of the public who need the service and are within the field of its operations, at reasonable rates and without discrimination. Section 614–12 et seq., General Code; Cincinnati, H. & D. R. Co. v. Bowling Green (1897) 57 Ohio St. 336, 49 N. E. 121, 41 L.R.A. 422; Butler v. Karb (1917) 96 Ohio St. 472, 117 N. E. 953. This duty does not permit such a public service corporation to pick out good portions of

a particular territory, serve only select customers under private contract, and refuse service (which it alone can give) to the remaining portions of territory and to other users. United Fuel Gas Co. v. Kentucky R. Commission, 278 U. S. 300, 309, 73 L. ed. 390, P.U.R.1929A, 433, 49 S. Ct. 150. Yet it is not a controlling factor that the corporation supplying service does not hold itself out to serve the public generally. It has been held that a business may be so far affected with a public interest that it is subject to regulation as to rates and charges even though the public does not have the right to demand and receive service. German Alliance Insurance Co. v. Lewis (1914) 233 U. S. 389, 58 L. ed. 1011, 34 S. Ct. 612, L.R.A.1915C, 1189.

[3, 4] Regardless of the right of the public to demand and receive service in a particular instance, the question whether a business enterprise constitutes a public utility is determined by the nature of its operations. Each case must stand upon the facts peculiar to it. A corporation that serves such a substantial part of the public as to make its rates, charges, and methods of operations a matter of public concern, welfare, and interest subjects itself to regulation by the duly constituted governmental authority. Clarksburg Light & Heat Co. v. Public Service Commission (1919) 84 W. Va. 638, P.U.R.1920A, 639, 100 S. E. 551. Nor should the curtailment of its incidental corporate functions made with the purpose of avoiding public regulatory processes be determinative of the true character of its business. Thus, changing the purpose clause of its charter, refraining from use of the right of eminent domain, avoiding a holding out to serve the public generally, and selling only to select consumers by private contract could be employed as subterfuges by many public utility companies. If the business is still affected with a public interest, it remains a public utility.

It is the conclusion of this court that appellant dedicated itself to public utility service in behalf of a substantial part of the public and within a substantial area so as to make its business a matter of public concern, welfare, and interest; consequently it is a public utility and subject to regulation by the Public Utilities Commission.

Many other authorities within this jurisdiction have been cited by counsel but all are inapposite in the instant case; here the factual foundation is different and the question presented has not been heretofore decided.

For the reasons given the order of the Public Utilities Commission will be affirmed.

Order affirmed.

Weygandt, C. J., and Day, Zimmerman, Myers, Matthias, and Hart, JJ., concur.

TEXAS SUPREME COURT

Humble Oil & Refining Company et al.

v.

Railroad Commission of Texas et al.

[No. 7293.]

(— Tex. —, 128 S. W. (2d) 9.)

Intercorporate relations, § 14 — Separate entities — Form or reality.

1. Courts will look through the forms to the realities of the relationship between corporations in order to determine whether each is a separate entity or a corporation or whether their commingled affairs are such as to constitute them one integrated and single business enterprise or whether, through intercorporate set-up, affiliation, or stock ownership, the purpose is to control the subsidiary corporation so that it is used as a mere agent of the owning corporation, p. 97.

Public utilities, § 49 — Wholesale gas company — Effect of contract.

2. A corporation which produces and sells gas on its own premises does not become a public utility subject to jurisdiction of the Commission by contracting to sell such gas to an unaffiliated public utility, although the contract requires the public utility to deposit a large forfeit to insure its carrying out the contract, to purchase a daily minimum quantity of gas, to construct pipe lines to serve certain cities and towns, and to try to develop a gas market, p. 99.

Contracts, § 3 — Commission jurisdiction — Pipe lines.

3. A statute placing under Commission jurisdiction agreements of companies controlling pipe lines establishing and prescribing prices, rates, rules, and conditions of service applies only to companies that may control pipe lines, and not to a gas producing company, p. 100.

Rates, § 92 — Jurisdiction of Commission — Producers of gas.

4. The Commission does not have jurisdiction over rates of mere producers of gas who sell their product at the point of origin, p. 101.

Rates, § 32 — Powers of Commission — Not implied.

5. The power of a Commission to fix prices and make rates must be conferred under statutory or constitutional language that is free from doubt, and that admits of no other reasonable construction, p. 102.

Expenses, § 8 — Powers of Commission — Cost of supply.

6. The Commission, in fixing gas rates, has the power and duty to inquire into the reasonableness or unreasonableness of a gas utility's contracts to purchase gas, p. 103.

[May 10, 1939.]

HUMBLE OIL & REFINING CO. v. RAILROAD COM. OF TEXAS

APPEAL from judgment of Court of Civil Appeals reversing a judgment of District Court for plaintiff in suit by private gas company to enjoin enforcement of Commission order attempting to fix price the company was to charge a public utility for gas; judgment of Court of Civil Appeals reversed, and judgment of District Court affirmed. For lower court decision see 19 P.U.R.(N.S.) 35, 101 S. W. (2d) 614. For Commission decision, see 11 P.U.R.(N.S.) 234.

APPEARANCES: Powell, Wirtz, Rauhut & Gideon, T. H. McGregor, C. L. Black, and Black & Graves, all of Austin, and R. E. Seagler, Lee M. Sharrar, and Robt. F. Higgins, all of Houston, for plaintiff in error Humble Oil & Refining Co.; J. E. Edmundson, J. Lee Dittert, and C. D. Duncan, all of Bellville, for plaintiff in error Emil Ueckert; Wm. McCraw, Attorney General and Alfred M. Scott and F. L. Kuykendall, Assistant Attorneys General, for defendants in error.

CRITZ, J.: This suit was filed in the district court of Travis county, Texas, by Humble Oil & Refining Company against the Railroad Commission of Texas, and its members, officially, to set aside and enjoin the enforcement of an order of the Commission attempting to fix the price Humble Oil & Refining Company is to charge M. & M. Pipe Line Company for gas under a written contract theretofore made and entered into between the two companies. M. & M. Pipe Line Company is a corporation chartered and operating as a public gas utility. Humble Oil & Refining Company is also a corporation, but unless the contract above mentioned makes it such as regards the gas contracted about in this instance, it is not here to be regarded as a public utility corporation. Humble Oil & Refining Company produces all the gas here involved from lands leased by it from certain private individuals who are interested, if at all, only as ordinary mineral lessors. These individual lessors intervened in the district court on the side of Humble Oil & Refining Company. The case was tried in the district court before the court without the intervention of a jury. At the close of the trial the court entered judgment for Humble Oil & Refining Company, granting it the relief prayed for. On appeal by the Commission to the court of civil appeals at Austin that court reversed the judgment of the district court, and entered judgment for the Commission. (1936) 19 P.U.R.(N.S.) 35, 101 S. W. (2d) 614. The case is before the supreme court on writ of error granted on application of Humble Oil & Refining Company and interveners.

As will appear from our discussion of this case, its decision will largely involve a proper construction of the contract above mentioned. This contract was entered into on June 7, 1928, by and between Humble Oil & Refining Company, on the one side, and M. & M. Pipe Line Company, at that time a partnership composed of Clint W. Murchison and R. L. Moyston, on the other side. We hereto attach a

copy of the above-mentioned contract, marked "Exhibit."

After such contract was entered into, a corporation was formed, and Murchison and Moyston, with the consent of Humble Oil & Refining Company, conveyed thereto the above-mentioned contract. This newly formed corporation took the name of the partnership, and succeeded to its rights and obligations. It will be noted that by the terms of the contract attached hereto, M. & M. Pipe Line Company agreed to pay Humble Oil & Refining Company 12½ cents per thousand cubic feet for the gas contracted for therein. Later this price was reduced by mutual agreement between the two companies to 8 cents. As we understand this record, the 8 cents contract price was in effect between the contracting companies at the time the Commission entered its order fixing 5 cents as the price to be charged by Humble Oil & Refining Company against M. & M. Pipe Line Company.

As we understand this record, generally speaking, Humble Oil & Refining Company and interveners, who will hereafter be designated "Humble," attacked the Commission order here involved on three main grounds, viz.:

1. On the ground that the Commission was without potential jurisdiction to enter it.

2. On the ground that the Commission did not have before it all necessary parties to authorize it to exercise its rate-making jurisdiction. As explanatory of this ground, it is contended by Humble that the individuals from whom it holds oil and gas leases were interested, and therefore necessary parties to the proceeding before the Commission, and that they were not there made parties.

3. On the ground that the rate or price of this gas, as fixed by the Commission, was unreasonable and confiscatory.

The record before us shows affirmatively that the district court did not decide the issues involving the questions of parties, or of unreasonableness or confiscation. The trial court simply expressly found and decided that the Commission was without potential jurisdiction in the premises, and on such finding and decision alone, entered judgment annulling the Commission order here involved, and enjoining its enforcement.

By its opinion and judgment, the court of civil appeals held that the Commission had potential jurisdiction to enter this order. Also, that court held with the Commission on the other questions above indicated, and, as a result of such holdings, reversed the judgment of the district court, and rendered judgment in all things upholding the rate order here attacked.

By proper assignments in this court and in the court of civil appeals, Humble contends that our Public Utility Act, Articles 6050 to 6066, both inclusive, does not attempt to subject to the rate-making power of the Commission mere producers of gas who sell the same at the point of origin, and who neither transport such gas on, over, or across the public highways of this state, nor exercise the right of eminent domain with reference thereto, nor sell such gas, nor offer it for sale to the public generally; but who merely sell under private contract to one concern.

Also, by proper assignments, Humble contends that if our public utility statutes above mentioned attempt to subject to the rate-making power of the Commission the gas producers above described, then such act is void because the legislature is without power, by legislative fiat, to change a private business to a public business when it is not such in fact.

By its opinion, the court of civil appeals holds that to concede, though it does not decide, that our public utility law is as contended for by Humble; that is to concede that under our public utility gas statutes, Arts. 6050 to 6066, *supra*, the Commission is given no jurisdiction to fix or prescribe rates for the sale of gas by a mere producer as above defined; still Humble by making this contract, in law, constituted itself a public gas utility under the above statutes as regards the gas here contracted, and therefore, as to such gas, subjected itself to the statutory rate-making jurisdiction of the Commission.

The Commission order here attacked contains the following provision: "It is *further ordered* by the Railroad Commission that Humble Oil and Refining Company from and after the 10th day of October, A. D. 1935, shall not charge, receive, or collect from M & M Pipe Line Company, in excess of 5 cents per thousand cubic feet for natural gas sold and delivered to M & M Pipe Line Company, whether such gas is delivered from the dry gas sand or direct from the gasoline extraction plant, and the M & M Pipe Line Company is hereby ordered not to pay to the Humble Oil and Refining Company for such gas in excess of 5 cents per thousand cubic feet."

It is evident from the above-quoted portion of the Commission order that the Commission has attempted to set aside and annul the contract between these two companies only in so far as it fixes a price that Humble is to charge M. & M. Pipe Line Company for the gas embraced therein. It is thus evident that the Commission has attempted to order Humble, a mere gas producer, to sell its gas to M. & M. Pipe Line Company, a public gas utility, at a price fixed by the Commission, and that even though the gas is sold at the point of origin.

[1] As already shown, the court of civil appeals upholds the above Commission order on the ground that Humble made itself a public gas utility by entering into the contract here involved. In support of its holding, the court of civil appeals cites the case of State v. Lone Star Gas Co. (1935) 11 P.U.R.(N.S.) 283, 292, 86 S. W. (2d) 484, 491, writ refused. In the case just cited the rule of law here involved is thus stated:

"The cases are legion which deal with the relationship of two or more corporations from the standpoint of ownership of the capital stock in one by another, and from the standpoint of association together for the purpose of carrying on a single or common business enterprise. The rule is well settled that courts will look through the forms to the realities of the relationship between two or more corporations in order to determine whether each is a separate entity or corporation; or whether their commingled affairs are such as to constitute them one integrated and single business enterprise; or whether, through intercorporate set-up, affilia-

tion, or stock ownership, the purpose is to control the subsidiary corporation or corporations so that they are used as the mere instrumentalities or agents of the owning corporation or corporations. In discussing the rule, it has been held that while 'ownership, alone, of capital stock in one corporation by another, does not create an identity of corporate interest . . . or create the relation of principal and agent or representative between the two'; still it has been repeatedly held that such rule is not applicable 'where stock ownership has been resorted to, not for the purpose of participating in the affairs of a corporation in the normal and usual manner, but for the purpose . . . of controlling a subsidiary company so that it may be used as a mere agency or instrumentality of the owning company or companies.' Chicago, M. & St. P. R. Co. v. Minneapolis Civic & Commerce Asso. (1918) 247 U. S. 490, 62 L. ed. 1229, 38 S. Ct. 553, 557; United States v. Lehigh Valley R. Co. (1911) 220 U. S. 257, 55 L. ed. 458, 31 S. Ct. 387; United States v. Reading Co. (1920) 253 U. S. 26, 64 L. ed. 760; 40 S. Ct. 425; United States v. Delaware, L. & W. R. Co. (1915) 238 U. S. 516, 59 L. ed. 1438, 35 S. Ct. 873. Also, in discussing the rule, the fact that the same persons are directors and managers of two corporations has been given consideration (McCaskill Co. v. United States [1910] 216 U. S. 504, 54 L. ed. 590, 30 S. Ct. 386, 391), and 'a growing tendency is therefore exhibited in the courts to look beyond the corporate form to the purpose of it, and to the officers who are identified with that purpose.' See, also, Gallatin Nat. Gas Co. v. Public Service Commission (1927) 79 Mont. 269, 256 Pac. 373. Where one corporation owns or dominates another, it has been often held that 'the independent entity of the two companies is so far disregarded that each is considered as but a part of the indivisible whole.' Kimberly Coal Co. v. Douglas (1930) 45 F. (2d) 25, 27; Re Kentucky Wagon Mfg. Co. (1932) 3 F. Supp. 958; Law v. McLaughlin (1933) 2 F. Supp. 601. And 'the rule which appears to be established by these cases is that, where the corporate organization and affairs of one railroad company are controlled and dominated by another railroad company through ownership of stock or lease, the roads must be regarded as identical for the purpose of rate making.' Pontiac, O. & N. R. Co. v. Railroad Commission (1918) 203 Mich. 258, 264, 168 N. W. 927, 929.

"A somewhat analogous question was decided by this court in Atchison, T. & S. F. R. Co. v. Railroad Commission (Tex. Civ. App. 1934) 9 P.U.R.(N.S.) 493, 496, 77 S. W. (2d) 773, 775 (writ refused), wherein it was held that subsidiary corporations, owned, controlled, and operated by railroads to carry on pick-up and delivery service, did not possess separate legal individuality from the parent corporations, as regards the jurisdiction of the Railroad Commission; and wherein it was held as follows: 'To permit railroads to perform such steps in the process of transportation through other separate legal entities created and owned by them would enable them to defeat the jurisdiction of the Commission over such transportation. And in such case where the stock of such separate corporation

is owned by the railroad company, and its sole function is merely to help conduct the business of the parent corporation under whose complete control it operates, and in the instant case largely, if not wholly, through the same employees, the subsidiary corporation will be treated as if it were a mere department of the railroad itself.'"

The judgment in the Lone Star Gas Company Case, *supra,* was reversed by the Supreme Court of the United States (1938) (304 U. S. 224, 82 L. ed. 1304, 24 P.U.R.(N.S.) 119, 58 S. Ct. 883), but the rule of law above announced was not questioned. We here and now approve and adopt as the holding of this court the above-quoted holding of the court of civil appeals.

[2] Under the undisputed record in this case, these two contracting corporations are absolutely separate and independent of each other in corporate set-up. Neither of them owns any stock in the other, and there is no common ownership of stock by the stockholders of the two corporations. Neither of these corporations is interested in the properties, profits, or losses of the other, except, of course, Humble is interested, like any other contracting party, in M. & M. Pipe Line Company being able, financially and otherwise, to take and pay for the gas contracted for by it.

From all that has been said, it is evident that in order to hold that Humble has rendered itself subject to the rate-making power of the Commission, as regards the gas included in this contract, it must further be held that such contract by its very terms has operated to associate these two companies together for the purpose of carrying on a single or common business, as regards this gas, and that to the extent that they should be treated, as regards such gas, as one business enterprise.

In this instance, it is conclusive that M. & M. Pipe Line Company is a public gas utility subject to the rate-making jurisdiction of the Commission. It is also conclusive that Humble is not a public gas utility subject to the rate-making jurisdiction of the Commission, unless this contract makes it such. As already stated, before it can be said that this contract makes Humble a public gas utility, the contract under discussion must legally operate to associate Humble and M. & M. Pipe Line Company in a common business enterprise, and that enterprise a public utility gas business. In other words, the contract must operate to make Humble an associate of M. & M. Pipe Line Company as regards the gas utility business of the last-named company.

As we interpret its opinion, the court of civil appeals, in effect, holds that this contract operated to engage these two corporations in a common business enterprise, and that a public gas utility enterprise, subject to the gas rate-making jurisdiction of the Commission, because:

(a) The paramount purpose of Humble in making this contract was to create and develop for itself, within the adjacent territory, a domestic consumer market for its gas.

(b) Such contract bound M. & M. Pipe Line Company, itself a public gas utility, to construct such pipe lines as might be necessary to serve certain cities and towns,—in any event, to

construct a certain number of miles of pipe line within a stated time.

(c) Such contract required a large forfeit to be deposited by M. & M. Pipe Line Company to insure Humble that it would carry out certain provisions of the contract.

(d) Such contract bound M. & M. Pipe Line Company to proceed with due diligence to secure gas utility franchises for the sale of gas in cities and towns, and to use its best efforts to develop a full gas market.

(e) Such contract bound M. & M. Pipe Line Company to take a daily minimum quantity of gas through its distributing system, or pay the contract price for the deficiency.

(f) Humble secured the performance of M. & M. Pipe Line Company's contractual obligations by taking a lien on all its properties used in the distribution of the gas in question.

We are unable to see how the making of a gas contract, such as is above indicated, by a party otherwise not a gas utility, with a gas utility, can operate to make both contracting parties one gas utility. In other words, we are unable to see how it can be said that Humble, by the terms of this contract, so associated itself with M. & M. Pipe Line Company as to make the public gas utility business of M. & M. Pipe Line Company the common business enterprise of both companies. As we understand this record, Humble is a mere seller of natural gas on its own leased premises, where the gas is produced. All that it is really interested in under this contract is to have M. & M. Pipe Line Company take and pay for the gas it contracted for. The other terms of the contract were undoubtedly provided in order to insure Humble that M. & M. Pipe Line Company would place itself in position to carry out its contractual obligations. Simply stated, it cannot be held that Humble has made itself a public gas utility by making this contract, unless it can be further held that all persons and parties who contract to sell gas at the point of origin to public gas utilities, by making such gas selling contracts, become public gas utilities subject to the rate-making jurisdiction of the Commission. To that length we are not prepared to go. No rule of law, statutory or otherwise, will justify us in doing so.

[3] Counsel for the Commission contend that the Commission order here involved is authorized by the provisions of Art. 6054, R. C. S. That statute reads as follows: "Art. 6054. All orders and agreements of any company or corporation, or any person or persons controlling such pipe lines establishing and prescribing prices, rates, rules, and regulations, and conditions of service, shall be subject to review, revision, and regulation by the Commission on hearing after notice as provided for herein to the person, firm, corporation, partnership, or joint stock association owning or controlling or operating the gas pipe line affected."

A very casual reading of the above statute will disclose that it only applies to any company or corporation, or to any person or persons who may control pipe lines. We have already demonstrated that in this instance Humble exercises no control whatever over any pipe line owned by M. & M. Pipe Line Company, and has no right to do so. It follows that Art.

6054, *supra,* cannot in any way operate to sustain this Commission order.

[4] It is evident from all that we have said that if the Commission order here involved is to be sustained, it must be alone on the ground that our gas utility statutes authorize the Commission to regulate and fix the price at which a producer of natural gas sells the same on the premises of production to a public gas utility. In other words, for this order to be sustained, it must be because our gas utility statutes authorize the Commission to fix the price at which a mere producer thereof must sell his product to a public gas utility, even though such product is sold by the producer at the point of origin, and even though such producer does not transport such gas on, over, or across the public highways of this state, or exercise the right of eminent domain in regard thereto, or sell the same, or offer it for sale, to the public generally; but merely sells, under contract, to one purchaser, who is a public gas utility. We shall now proceed to discuss other gas utility statutes which we think are pertinent to the issues to be decided.

As already stated, our gas utility statutes are Arts. 6050 to 6066, both inclusive. Articles 6053 and 6054 are the statutes which directly define the jurisdiction of the Commission with regard to gas rate making. We have already quoted and discussed Art. 6054. Article 6053 reads as follows: "Article 6053. The Commission after due notice shall fix and establish and enforce the adequate and reasonable price of gas and fair and reasonable rates of charges and regulations for transporting, producing, distributing, buying, selling, and delivering gas by such pipe lines in this state; and shall establish fair and equitable rules and regulations for the full control and supervision of said gas pipe lines and all their holdings pertaining to the gas business in all their relations to the public, as the Commission may from time to time deem proper; and establish a fair and equitable division of the proceeds of the sale of gas between the companies transporting or producing the gas and the companies distributing or selling it; and prescribe and enforce rules and regulations for the government and control of such pipe lines in respect to their gas pipe lines and producing, receiving, transporting, and distributing facilities; and regulate and apportion the supply of gas between towns, cities, and corporations, and when the supply of gas controlled by any gas pipe line shall be inadequate, the Commission shall prescribe fair and reasonable rules and regulations requiring such gas pipe lines to augment their supply of gas, when in the judgment of the Commission it is practicable to do so; and it shall exercise its power, whether upon its own motion or upon petition by any person, corporation, municipal corporation, county, or Commissioner's precinct showing a substantial interest in the subject, or upon petition of the attorney general, or of any county or district attorney in any county wherein such business or any part thereof may be carried on."

As already shown, Art. 6054 refers only to pipe lines. Articles 6053 and 6054 are parts of the same act and subject. When the two are read together, it is evident that both are dealing with rate making as regards pipe lines. If this is not so, Art. 6054 is

utterly superfluous. If, however, Art. 6053 is construed alone, it can furnish no jurisdiction to the Commission to regulate or fix the price of natural gas sold by a mere producer thereof on the premises of production to a public gas utility. Plainly, Art. 6053 grants power or jurisdiction to the Commission to fix, establish, and enforce gas rates only as concern pipe lines. No intention is evidenced in Art. 6053 to confer jurisdiction on the Commission to fix or prescribe the price at which a mere producer of gas sells his product on the premises of production to a public gas utility.

We have extended this opinion to such a length that we refrain from a more exhaustive discussion of the rate-making provisions of our gas utility statutes, *supra*. We will say, however, that when Arts. 6053 and 6054, *supra*, are read either together, or separately, they demonstrate beyond any doubt that the rate-making jurisdiction of the Commission has not been extended to cover mere producers of gas who sell their product at the point of origin. Any other construction of Arts. 6053 and 6054 would throw them out of harmony with each other, and also do violence to their plain provisions when considered separately. Also, any other construction of the above-mentioned Articles would, in several particulars, throw them out of harmony with other provisions of our gas utility statutes.

[5] It seems to be argued that our gas utility statutes, by necessary implication, confer the power on the Commission to fix the price of gas where it is sold by the producer on the premises of production to a public gas utility. We think that the power to fix prices and make rates by a Board or Commission is not to be taken as conferred by implication. Such power must be conferred under statutory or constitutional language that is free from doubt, and that admits of no other reasonable construction. Commercial Standard Ins. Co. v. Board of Ins. Comrs. (Tex. Civ. App. 1930) 34 S. W. (2d) 343, writ refused: Siler v. Louisville & N. R. Co. (1909) 213 U. S. 175, 193, 53 L. ed. 753, 29 S. Ct. 451. These authorities could be multiplied many times, but they are sufficient. Certainly, it cannot be said that our gas utility statutes, in clear and unmistakable language, confer the power on the Commission to fix prices or rates which private gas producers shall charge public gas utilities.

It is contended by counsel for the Commission that the power of the Commission to fix the price at which a mere producer of gas must sell his product to a public gas utility, even though such gas is sold at the point of origin, should be upheld because the Commission will be greatly hampered and circumscribed in regulating gas utility rates or prices if it cannot also fix the rates or prices that producers charge such utilities for the gas sold thereto. A full answer to this contention is to point to the fact that no statute has conferred such power on the Commission. Furthermore, the same argument could be used to sustain the power of the Commission to fix prices for all articles, things, and services sold to public gas utilities. Everything that the utility may lawfully purchase must be taken into consideration in fixing the ultimate gas utility rate. We grant that gas utility rates might more effectively be controlled if private gas

producers could be compelled to sell gas to such concerns at prices determined and fixed by the Commission; but, as already indicated, that fact does not justify a court in upholding such a power in the absence of any sort of statutory authority. We are dealing at this point with but one primary question,—the power of the Commission to prescribe or fix prices at which mere gas producers must sell their product on the premises of production to public gas utilities. We are not dealing with the power of the Commission to fix prices at which gas utilities shall sell gas to each other or to the general public. We simply hold that our gas utility statutes do not confer on the Commission the power here attempted to be exercised. In so holding we do not want to be understood as in any way attempting to define all the powers in regard to gas rate making that have been, or hereafter may be, conferred on the Commission.

[6] At this point we pause to call attention to the fact that our holding to the effect that the Commission is without jurisdiction to tell a mere gas producer what price he must charge for his product when sold on the premises of production to a public gas utility does not mean that the Commission, in all instances and under all circumstances, in fixing gas utility rates, must allow the gas utility affected full credit for the purchase price of the gas purchased by it. In regard to that matter, we think that, in fixing gas utility rates, it is not only the power but the duty of the Commission to inquire into the reasonableness or unreasonableness of the gas utility's gas contracts. Western Distributing Co. v. Kansas Pub. Service Commission, 285 U. S. 119, 76 L. ed. 655, P.U.R. 1932B, 236, 52 S. Ct. 283; Smith v. Illinois Bell Teleph. Co. (1930) 282 U. S. 133, 75 L. ed. 255, P.U.R. 1931A, 1, 51 S. Ct. 65.

Finally, we wish to say that we do not want to be understood as expressing an opinion, one way or the other, on the power of the legislature to confer on the Commission jurisdiction to fix a price at which a mere producer of natural gas must sell his product on the premises of production to a public gas utility. It is not necessary in this case to decide that question. We simply hold that the legislature so far has not attempted to confer such jurisdiction on the Commission.

The judgment of the court of civil appeals is reversed, and the judgment of the district court is affirmed.

Exhibit.

"The State of Texas, County of Austin

"This agreement this day made and entered into by and between Humble Oil & Refining Company, a Texas corporation domiciled in Harris county, Texas, hereinafter called 'First Party,' and M. & M. Pipe Line Company, a copartnership composed of Clint W. Murchison of Dallas county, Texas, and R. C. Moyston of Pecos county, Texas, hereinafter called 'Second Party,' Witnesseth:

"That Whereas First Party is the owner of oil and gas leases covering lands in what is known as the Raccoon Bend Oil Field in Austin county, Texas, productive of natural gas and may acquire other properties in said field during the life of this agreement productive of natural gas and Second

Party plans the construction of a pipe line distributing system for the delivery of natural gas to the neighboring towns and cities and desires to purchase gas from First Party for use in supplying its market through such system;

"Now, therefore, in consideration of the mutual covenants and obligations herein undertaken and imposed, it is hereby agreed between the parties hereto as follows:

"1. Upon and subject to the other provisions hereof, First Party hereby sells and agrees to deliver to Second Party and Second Party hereby purchases and agrees to receive and pay First Party for a quantity of natural gas produced from the properties of First Party above described equal to the full requirements of the distributing system to be built by Second Party as herein contemplated between a minimum of 180,000,000 cubic feet per year over the period of the contract (to be delivered in approximately equal quantities of 500,000 cubic feet per day) and a maximum of 2,000,000 cubic feet per day if and while this quantity is currently available for delivery from said leases and properties after supplying the fuel needs of First Party in its business of producing, transporting and refining oil and gas; provided, however, that Second Party shall not be required to receive gas before the expiration of ninety days from date hereof and shall not be required to receive gas in excess of a minimum of 250,000 cubic feet per day at any time prior to the expiration of six months from date hereof. It is understood that the right of Second Party to require current delivery from day to day of the quantities of gas sold to it hereunder shall be prior and superior to the rights of other purchasers to require current deliveries to them from day to day of gas from said properties under contracts that may be made between such purchasers and First Party. So long as and while First Party has the minimum daily quantities herein agreed to be sold and purchased available for delivery from said properties, Second Party agrees to pay First Party for such quantities as hereinafter provided whether such quantities are taken and received by Second Party or not.

"2. First Party specifically reserves the right to manufacture gasoline from the gas produced from said properties and to deliver to Second Party residue gas from its gasoline plant in lieu of natural gas from the wells, and in such event the gasoline plant shall be the point of delivery and measurements shall be made at such point in the manner hereinafter provided for deliveries from the wells or central delivery points.

"3. Second Party agrees to proceed with due diligence in an effort to secure franchises for the sale of gas in the towns and cities in the territory near said Raccoon Bend Field and to construct such pipe lines as may be necessary to serve the cities and towns in which franchises are obtained and customers that may be secured by diligent effort, and in any event to construct a minimum of 40 miles of main line pipe lines to such neighboring cities within twelve months from date hereof. It agrees further to use its best efforts to develop a full market through such distributing system. Concurrently with the execution hereof Second Party is depositing with First

National Bank of Houston, Texas, the sum of $10,000 to the credit of both parties hereto and to be held and disposed of by said bank as herein provided. In the event Second Party shall fail to take a minimum of 250,000 cubic feet of gas per day from First Party hereunder within ninety days from date hereof, or should fail to take a minimum of 500,000 cubic feet of gas hereunder per day within six months from date hereof, or should fail to complete as much as 40 miles of main line pipe lines to neighboring distributing points within twelve months from date hereof, or during said period of time shall fail faithfully to carry out the other covenants and agreements herein made to be performed by it hereunder, First Party may at its option cancel this contract and require the delivery to it by said bank of said sum of $10,000 together with any interest thereon allowed by said bank, the amount of which deposit the parties hereto have agreed shall be liquidated damages to First Party resulting from such failure of performance by Second Party hereunder. The delivery of such sum to First Party by said bank as above provided shall not be taken, however, as settlement or payment for any gas delivered to Second Party hereunder. If at the expiration of twelve months from date hereof Second Party has fully performed all of the covenants and obligations assumed by and imposed upon it hereunder and/or First Party shall not elect to cancel this contract on account of failure of performance, then said bank shall deliver said sum of $10,000 together with any interest allowed thereon to Second Party.

"4. Except as provided in Paragraph 2 hereof, deliveries of the gas sold and purchased hereunder shall be made by First Party under well pressure at the mouth of each well or, upon election of First Party, at a central point or points in the field designated by First Party. Second Party shall lay its own lines and make its own connections with the wells or other delivery facilities fixed by First Party as above provided at Second Party's cost and expense. All connections shall be made and maintained in a manner and with equipment satisfactory to First Party. Where necessary, valves shall be installed by Second Party to prevent back pressure upon wells. First Party shall install necessary drips and separators. In general the wells and delivery facilities with which connections are made and the manner and proportion of takings from wells and other delivery facilities shall be under the control of First Party. So far as its rights permit, First Party hereby gives and grants to Second Party the right to maintain and operate its said pipe lines and facilities upon, across, and over the leases and properties of First Party from which said gas is produced.

"5. Second Party at its expense shall install, maintain, and keep in good repair at each well with which connection is made or at the other point or points of delivery fixed by First Party as above provided a Westcott orifice daily chart meter or other standard meter approved by First Party and, if necessary, a high pressure regulator provided for reducing the pressure, together with appurtenant fixtures as may be required to measure and regulate all gas sold and delivered hereun-

der. Whenever regulators are installed, the meters shall be located on the low pressure side of same. All meters shall be tested at intervals of approximately thirty days and as near as practicable on the corresponding day of each month. All tests shall be made in the presence of First Party's representative if it desires to have a representative present. First Party may require a test of any meter at any time upon two days' written notice to Second Party. Any meter installed by Second Party found on test to register not more than 2 per cent fast or slow shall be deemed to be correct but if so found to be more than 2 per cent fast or slow, same shall be promptly corrected by Second Party and adjustment in volume of gas delivered shall be made by increasing or decreasing, as the case may be, by an amount equal to the amount of the inaccurate registration. No adjustment shall be made to extend prior to the next preceding test. During the time any meter is out of repair or is being tested or in the event of a sudden failure of any meter to register accurately for any period within the 2 per cent variation allowed herein, if it is not feasible to install another meter, the volume of gas delivered shall be estimated until a new or repaired meter is installed, and adjustment and settlement shall be made at the regular monthly periods on the basis of the amount of gas registered at like pressure for like periods of time when the meter was registering accurately. In no event shall a meter remain out of service for a period of more than thirty days.

"First Party may at its election install and maintain meters of standard type corresponding with those required to be installed by Second Party as a check upon any of Second Party's meters. If First Party shall exercise such right, then in the event of failure of Second Party's meters to register accurately at any time (allowing, of course, for the variation above mentioned) the registration of First Party's meters shall be taken as the correct quantity of gas delivered by First Party to Second Party hereunder and same shall not be estimated in accordance with the above provisions; provided, of course, First Party's meters are correct within said 2 per cent variation. Meters so installed and maintained by First Party hereunder shall be tested and adjusted in the same manner as is provided for the testing and adjusting of Second Party's meters. Either party shall have access to the meters of the other party at all reasonable times.

"6. All meter charts when removed from Second Party's meters shall be forwarded to the office of First Party in Houston, Texas, for computation and check and shall be promptly returned by First Party to Second Party after check is made. They shall thereafter remain in the permanent files of Second Party and be subject to inspection and check at all reasonable times by First Party.

"7. The gas sold and delivered hereunder shall be measured at the point or points of delivery herein provided and the volume of gas so measured shall be computed for purposes of payment on the basis of a standard cubic foot at a pressure of 20 ounces above atmospheric pressure of 14.4 pounds and at an assumed temperature of 60

degrees Fahrenheit and an assumed specific gravity of .6.

"8. On or before the 15th day of each calendar month Second Party agrees to make payment to First Party at Houston, Texas, for all gas delivered by First Party to Second Party hereunder during the preceding calendar month at a price of 12½ cents per thousand cubic feet, such payment to be accompanied by a full statement in detail of daily quantities of gas delivered and of computations involved. In the event the quantity of gas delivered shall not equal the minimum quantities herein provided to be taken by Second Party, such payment shall be for the value of such minimum quantities as above provided. Past due amounts hereunder shall bear interest at 8 per cent per annum. Second party hereby gives and grants to First Party a lien upon all its pipe lines and other equipment and physical property comprising its distributing system through which the gas herein sold shall be delivered to market, as security for the payment of all amounts due First Party hereunder, which lien shall be enforcible as any mortgage lien.

"9. First Party warrants the gas sold and delivered hereunder against the lawful claims of all persons whomsoever.

"10. Notice herein provided to be given to First Party shall be given at its office in Houston, Texas, and notice herein provided to be given to Second Party shall be given at its office in Dallas, Texas. Written notice shall be deemed served within the time required for same to be delivered in the usual course if properly addressed and deposited in the United States mail.

"11. If after thirty days' written notice to Second Party by First Party of the breach by Second Party of any of the covenants assumed by or obligations imposed upon Second Party hereunder Second Party shall fail to remedy such breach and comply with the terms and provisions hereof, then First Party may cancel and terminate this contract. Such cancellation or termination shall not relieve Second Party of the obligation to make payment of any amounts then due First Party hereunder.

"12. Unless terminated as herein otherwise provided, this contract shall be and remain in full force and effect during the productive life of the above described leases and properties of First Party to but not beyond a period of ten years from date hereof.

"13. This contract is not assignable by Second Party without the written consent of First Party but, subject to this provision, same shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, assigns, and successors in interest. At the expiration of the 10-year term hereof, Second Party shall have a preferential right to purchase the available quantity of gas from said properties that First Party has for sale not to exceed the amount covered hereby, provided the price and terms offered are agreeable to First Party.

"In Testimony Whereof witness the signatures of the parties hereto in duplicate this the 7th day of June, A. D. 1928.

"(Signatures of parties omitted.)"

CIVIL AERONAUTICS AUTHORITY

CIVIL AERONAUTICS AUTHORITY

Re Airline Feeder System, Incorporated

[Docket No. 57-401-E-1, Serial No. 65.]

Certificates of convenience and necessity, § 168 — Admissibility of evidence — Air carrier service.

1. Evidence introduced by an air carrier, not a party but appearing at a hearing on application by another air carrier for a certificate of convenience and necessity under the "grandfather" clause of the Civil Aeronautics Act, is admissible when relevant and material to the issue of whether the applicant's service was inadequate and inefficient during the "grandfather" period, p. 109.

Certificates of convenience and necessity, § 61 — Prescriptive rights of air carrier — Adequacy of prior service.

2. The Civil Aeronautics Authority, in determining whether the service rendered by a particular air carrier was adequate and efficient within the meaning of § 401(e)(1) of the Civil Aeronautics Act (providing for the grant of a certificate as a matter of right because of prior operation), is not limited to the consideration of technical quality alone, such as mechanical equipment and personnel meeting the safety requirements and rules of the Bureau of Air Commerce, p. 110.

Certificates of convenience and necessity, § 61 — Prescriptive rights of air carrier — Adequacy of prior service.

3. A certificate of convenience and necessity for air carrier service, sought under § 401(e)(1) of the Civil Aeronautics Act by reason of prior operation, should be denied on the ground that such prior operations were not adequate and efficient when during the "grandfather" period a substantial demand for air transportation service existed but service was so slight as to amount almost to no service at all, regardless of underlying causes such as financial inability giving rise to such inadequate and inefficient service, p. 110.

[June 9, 1939.]

APPLICATION *for certificate of public convenience and necessity under § 401(e)(1) of the Civil Aeronautics Act of 1938; denied.*

APPEARANCES:* John S. Wynne, for applicant; John H. Wanner, for Civil Aeronautics Authority.

By the AUTHORITY: Airline Feeder System, Inc., by application filed October 21, 1938, seeks a certificate

* The following persons also entered appearances under Rule 4(a) and (b) of the Rules of Practice: Hamilton O. Hale for American Airlines, Inc.; Oscar Monrad for the city and chamber of commerce of New Haven, Conn.; W. Parker Seeley for the Aviation Committee, chamber of commerce, Bridgeport, Conn.; Walter E. Goddard for the Stratford Trust Company, Stratford, Conn.

of public convenience and necessity under § 401 (e) (1) of the Civil Aeronautics Act of 1938. Authorization is sought to engage in scheduled air transportation of passengers and property between the terminal points Newark, N. J., and Westfield, Mass., via the intermediate points Bridgeport, New Haven, and Hartford, Conn. Authorization was also sought under § 401 (a) of the act to transport mail over this route. However, this proceeding is limited to a consideration of applicant's rights under § 401 (e) (1) of the act and applicant's request to transport mail is not considered herein.

The application was filed within the statutory period and due notice thereof was given to the public and to the aid carriers included in a list issued by the Authority. A public hearing thereon was held before Examiner Robert J. Bartoo of the Authority. American Airlines, Inc., filed a motion for leave to intervene. The motion was denied and American Airlines, Inc., entered an appearance at the hearing in accordance with Rule 4 (b) of the Rules of Practice.

[1] Counsel for applicant moved that all evidence introduced at the hearing on behalf of American Airlines be stricken from the record as irrelevant. The Authority, pursuant to § 4 (b) of the Rules of Practice, permits any person to present any evidence in a proceeding if such evidence is material and relevant to the issues raised in that proceeding. The evidence introduced by American Airlines was relevant and material to the issue of whether applicant's service was inadequate and inefficient during the "grandfather" period, and was therefore admissible.

The examiner's report was duly filed and served, and opportunity was given for taking exceptions to this report. Exceptions were filed by counsel for the Authority and by counsel for American Airlines, Inc. Counsel for the Authority and counsel for applicant also filed briefs.

Applicant began operations on October 5, 1937, when it inaugurated the transportation of persons and property in scheduled operations between Newark, N. J., and Hartford, Conn., with an intermediate stop at New Haven, and the transportation of property only between Hartford and Springfield, Mass., pursuant to a letter of authority issued by the Department of Commerce under the Air Commerce Act of 1926, as amended. This letter was amended on October 21, 1937, to change the northern terminal point from Springfield to Westfield, Mass., and to authorize the transportation of persons over the entire route. On March 10, 1938, the letter was again amended to include Bridgeport, Conn., as an intermediate stop. On July 11, 1938, the Department of Commerce issued a scheduled airline competency certificate to applicant.

The proceeding herein is governed by the so-called "grandfather" clause, § 401 (e) (1) of the act, which requires that a certificate of public convenience and necessity shall be issued to an applicant upon proof only that during the so-called "grandfather" period [1] it was an air carrier, continuously operating as such (except as to

[1] From May 14, 1938 to August 22, 1938, the effective date of § 401.

interruptions of service over which it had no control), unless the service it rendered for such period was inadequate and inefficient.

Evidence was introduced by applicant at the hearing for the purpose of establishing the facts required to be shown under this section. The principal issue raised, however, on exceptions and briefs related to the question of the adequacy and efficiency of applicant's service during the "grandfather" period.

[2] In connection with this latter issue, the record shows that the mechanical equipment and the personnel of applicant met, during the "grandfather" period, the safety requirements and rules of the then existing Bureau of Air Commerce of the Department of Commerce, and an air carrier inspector qualified as an expert witness for the Authority stated that by those standards in his opinion the operations as conducted by applicant during the "grandfather" period were adequate and efficient. However, in determining whether the service rendered by a particular air carrier was adequate and efficient within the meaning of § 401 (e) (1) the Authority is not limited to the consideration of technical quality alone.

[3] The record shows that applicant began operations in October, 1937, with two daily round trips over the route then authorized. In February, 1938, scheduled service was reduced to one daily round trip over the route. Thereafter, applicant experienced financial difficulties and a considerable decrease in passenger traffic, with the result that applicant found it necessary to seek relief under the bankruptcy statutes. On April 12, 1938, one month prior to the "grandfather" period, applicant filed a petition for relief under § 77B of the Federal Bankruptcy Act. This petition was approved by the court on April 14, 1938. Applicant remained in control and management of its assets, but at the time of the hearing no plan of reorganization had been approved by the court. On April 14, 1938, applicant further reduced its scheduled service to one weekly round trip over the route.

Inasmuch as applicant operated on a weekly schedule, fourteen round trips were scheduled over the route by it during the "grandfather" period. Of these fourteen trips, three were canceled because of adverse weather conditions. Of the remaining eleven trips, one was canceled and another interrupted and then canceled because of mechanical difficulties. As a result, applicant actually operated only nine round trips over the route during the "grandfather" period.

A total of eleven revenue passengers was carried by applicant during the entire "grandfather" period. At no time did it carry any property other than passenger baggage. Total operating revenues from April 15, 1938, when the weekly schedules were inaugurated, to August 31, 1938, amounted to only $105.25. The operating costs for the same period totaled $18,930.37. Thus, during the period, applicant sustained a net loss of $18,825.12.

The function of applicant was stated by applicant's president to be not only to render a local service between the points on applicant's route but also to render service as a "feeder" line whereby all classes of traffic are

afforded interconnections with all major air carriers at Newark, N. J. He said: "The service rendered by Airline Feeder System, Inc., on its route provides the necessary feeder service whereby all classes of traffic originating and terminating on the route are afforded interconnections with all major air carriers at Newark, N. J. By this means and by the service afforded by the applicant, through air-line transportation is afforded to many communities in this densely populated section of the United States through which the applicant's route extends, to and from all parts of the country."

Applicant served two points in common with other air carriers. Hartford, Conn., is also served by American Airlines, Inc., and Newark, N. J. is also served by American Airlines, Inc., United Air Lines Transport Corporation, Transcontinental & Western Air, Inc., Western Air Lines, Inc., and Canadian Colonial Airways, Inc. However, it was testified that none of the schedules of applicant connected with any schedule of American Airlines, Inc. at Hartford. Furthermore, since applicant operated only a weekly schedule, "through air-line transportation" referred to by applicant's president was afforded but once a week to passengers arriving at Newark on the aircraft of other air carriers and destined to points on applicant's route, and to passengers arriving at Newark on the aircraft of applicant and destined to points beyond Newark. It thus appears that applicant's local and "feeder" service, of only nine round trips during the "grandfather" period, was in fact so slight as to amount almost to no service at all in light of the traffic demand discussed in the following paragraphs:

The president of applicant testified that, during the "grandfather" period, the demand for passenger service had decreased to such an extent that this demand was "adequately and efficiently" served by the weekly service of applicant notwithstanding that it carried only eleven revenue passengers during this entire period. However, the vice president of applicant also testified that a large potential demand for the service of applicant existed by reason of the population density of, and the economic activities in, the area through which its route extends, but that during the "grandfather" period and for some time prior thereto, applicant was not in a position financially to develop and maintain this demand through traffic promotional work, ". . . which all air transport companies find necessary."

In this respect, it is significant to note that during the months of May, June, July, and August, 1938, American Airlines, Inc., carried between Hartford and Newark, both of which are points on applicant's route, a total of 1,396 persons originating at one of these points and destined to the other. These figures clearly indicate the existence of a passenger demand for air transportation in this area considerably in excess of the small demand which the president of applicant stated applicant experienced.

The record shows that during the first two weeks of April, 1938, when applicant was operating daily schedules over the route, a total of seventeen revenue passengers were carried on nine round trips, or approximately two revenue passengers per round

trip, whereas, during the entire "grandfather" period of fourteen weeks, only eleven revenue passengers were carried. It, therefore, also appears from the evidence presented by applicant itself that a substantial demand for air transportation existed in this area, and that the number of persons who actually presented themselves to applicant for transportation during this period is no true index of the number of persons who might have presented themselves had the applicant not curtailed its operations so drastically. The failure of applicant to carry more than eleven revenue passengers during the entire "grandfather" period can only be attributed to the failure or inability of applicant so to arrange its affairs as to attract a reasonable amount of this larger passenger demand. It may be that the curtailment of applicant's service became necessary by reason of the poor financial condition of applicant. However, in determining whether the services rendered by an air carrier were inadequate and inefficient, the Authority is not concerned with the underlying causes giving rise to such inadequate and inefficient service.

On consideration of the record in this proceeding, the Authority finds the following facts:

1. Applicant was authorized to transport persons and property during the "grandfather" period in scheduled operations between Newark, N. J., and Westfield, Mass., via Bridgeport, New Haven, and Hartford, Conn., pursuant to proper authorization.

2. Applicant commenced service in October, 1937, over the route then authorized, by conducting two round trips daily over that route. In February, 1938, the scheduled service of applicant was reduced to one daily round trip over the route then authorized.

3. On April 12, 1938, applicant filed a petition under § 77B of the Federal Bankruptcy Act, being permitted by the court to retain control and management of its assets so that, during the "grandfather" period, applicant had control and management of its assets.

4. On April 14, 1938, applicant further reduced its scheduled service to one weekly round trip over the route then authorized.

5. During the "grandfather" period from May 14 to August 22, 1938, applicant scheduled a total of fourteen round trips over the route then authorized. During such period, applicant operated nine of these fourteen scheduled round trips. Applicant carried a total of eleven revenue passengers on the nine round trips during such period and no property other than passenger baggage. Applicant made connections during such period only once a week at Newark with certain other air carriers and made no connections at Hartford, a large city also served by another air carrier. The operations of applicant for the period from April 15 to August 31, 1938, which includes the "grandfather" period, produced operating revenues of $105.25; operating costs were $18,930.37; and net loss to applicant was $18,825.12.

6. A substantial demand for air transportation service existed during the "grandfather" period in the area served by applicant which applicant did not satisfy.

Therefore, the Authority finds that

the service rendered by applicant on the route between the terminal points Newark, N. J., and Westfield, Mass., via Bridgeport, New Haven, and Hartford, Conn., was inadequate and inefficient during the period from May 14 to August 22, 1938. This conclusion renders unnecessary consideration of the questions of the status of applicant as an air carrier and whether it continuously operated as an air carrier during the "grandfather" period within the meaning of § 401 (e) (1) of the act.

The application in this proceeding will therefore be denied and an appropriate order will be entered.

The following members of the Authority concurred in the above opinion: Hinckley, Branch, Ryan, Warner.

Mr. Mason did not participate in decision of this case.

UTAH PUBLIC SERVICE COMMISSION

Re Rates and Practices of Common Motor Carriers et al.

[Investigation Docket Nos. 4, 5.]

Rates, § 425 — Motor carriers — Districts or natural trade routes.

1. The matter of establishing rates and charges of common and contract motor carriers in the state can best be handled by districts or natural trade routes, where in some districts the operating and traffic conditions are vastly different than in other districts, p. 115.

Discrimination, § 124 — Motor carrier rates — Common and contract carriers.

2. Lower rates of contract motor carriers than common carriers for similar services, resulting in the employment of contract operators to haul general commodities and thereby placing some merchants in a preferred position, results in a discriminatory situation, and a more healthy condition will follow an adjustment whereby the rates on general merchandise of both types of carriers are placed upon a common basis, p. 115.

Rates, § 425.1 — Motor carrier — Maximum and minimum — Private and contract carriers.

3. Class rates and merchandise rates established by the Commission were required to be applied as maximum and minimum rates for all common motor carriers, and the merchandise rates were required to be applied as minimum rates for all contract carriers, p. 115.

[June 29, 1939.]

INVESTIGATION *of rates and practices of common and contract motor carriers; rates established.*

APPEARANCES: Common Motor Carriers: H. H. Smith, for Eastern Utah Transportation Co.; A. G. Winter and Willard Richards, for Rio Grande Motorway, Inc.; A. T. Burton and Sam D. Thurman, for Sterling Transportation Co.; O. V. George, for Delta-Fillmore Stages; K. Tracy Power, for himself; C. S. Thomson, for Moab Garage Co.; J. J. Milne, for J. J. Milne Truck Line; F. M. Orem, for Utah Central Truck Line; Ed Coons, for Coons Truck Line; S. O. Bolinder, for Salt Lake & Bingham Frt. Line; D. R. Hout, for Salt Lake-Coalville Stages; F. A. Miller, for Bingham Stage Lines; Nick Galanis, for Carbon Freight Line and Arrow Auto Line; Newell Warner, for Warner Truck Line; Theron M. Davis and O. E. Jorgensen, for Salt Lake-Ogden Transp. Co.; S. D. Burton, for himself.

Contract Carriers: J. C. Hadley, for Hadley Transfer & Storage Co.; James Reed, for Hemmingson & Reed; J. M. Mickelson, for himself; William Farrar, for himself; Jack Gingell, for himself; J. E. Tietjen, for himself; L. C. Norton, for himself; Marcell Graham, for himself; A. B. Robinson, for himself; Alma F. Randall, for himself; Ervin Stohl, for himself; R. J. Penman, for Penman Trucking Co.; Don Petersen, for himself; A. M. Marchant, for himself; R. D. Wells, for himself; Dan Jepperson, for himself; J. W. Partington, for Montgomery Ward Co.; E. G. Despain, for Alta Truck Line; J. C. Hunt, for Hunt Truck Line; Leland Hair, for Hair Truck Line.

By the COMMISSION: Hearings in these two cases were held separately, but the matters under consideration concerned both common and contract operators, and in so far as this report is concerned, the two cases will be combined.

The Commission's Investigation Docket No. 4 was commenced May 4, 1938. Notice was duly mailed to all common motor carriers of general commodities intrastate in Utah, operating under the jurisdiction of this Commission, and the first hearing was held at the office of the Commission, state capitol, Monday, May 23, 1938. At said hearing those appearing desired the Commission's rate department to prepare a sample tariff of rules, regulations, and class rates. This was done and on June 8, 1938, the sample tariff, containing the rules, regulations, and mileage schedule of class rates was duly sent to all common motor carriers operating under the jurisdiction of this Commission, with request that on or before July 1, 1938, said operators should file with the Commission whatever objections or suggestions they might have to the proposed tariff. No objections were received and many of the operators have voluntarily adopted for their use all of the essential provisions of the tariff, including the mileage schedule of class rates, but no order requiring the general use of said tariff has been issued for the reason that the traffic and operating conditions of many lines are such as to need individual consideration.

Investigation Docket No. 5 was initiated on May 3, 1938. After due and legal notice to all contract carriers operating under permits issued by this Commission, hearing was held on June 1, 1938, at the office of the Com-

mission. At said hearing the Commission's rate department proposed that the rates and charges of common motor and contract carriers operating under the jurisdiction of this Commission, on general commodities, be fixed at the same levels for the same service. With one exception, all those appearing at the hearing had no objections to such adjustment.

[1] Because of the fact that in some districts of the state the operating and traffic conditions are vastly different than in other districts the Commission has decided that this matter can be best handled by districts, or natural trade routes. The Commission's rate department made a study of the rates, charges, and related matters of common and contract carriers operating between Salt Lake City and Provo, on the one hand, and points on Highway No. 89 and lateral highways, from and including Nephi to Kanab, on the other hand. After that study was completed a proposed report was issued on May 18, 1939, wherein a system of class and merchandise commodity rates was proposed. Carriers and other interested parties were given ten days in which to file exceptions to the proposed rates and charges. A few exceptions were filed by carriers and shippers. These have been given consideration and adjustments worked out by the rate department mutually satisfactory to carriers and shippers. The matter is now ready for final report and order.

[2] In most instances the services of the common carriers and of the contract carriers are competitive but the rates and charges of the various operators differ widely. Generally speaking, the rates of contract operators are somewhat lower than those of the common carriers for similar services. The practice of employing contract operators to haul general commodities has had the effect of placing some merchants within the district in a preferred position in so far as transportation rates and charges are concerned, giving them an advantage over their competitors. The Commission feels that such an adjustment results in a discriminatory situation in so far as the wholesalers serving the district and the retailers within the district are concerned, and that a more healthy condition will follow an adjustment whereby the rates on general merchandise of both types of carriers are placed upon a common basis.

[3] Accordingly, this report prescribes a mileage distance schedule of class rates to apply both northbound and southbound over the route above described, and a set of merchandise commodity rates based on those mileage class rates for the merchandise items usually handled by merchants within the districts to apply southbound only. The class rates hereinafter set out are to apply to common carriers as maximum and minimum class rates. Contract carriers do not have class rates or classifications of commodities. The merchandise schedules of rates, therefore, are to apply as minimum commodity rates for contract carriers and maximum and minimum merchandise commodity rates for common motor carriers. These merchandise commodity rates are to apply to common and contract carrier transportation, southbound only, from Salt Lake City and Provo on the north, to Nephi and points south

thereof, as far as Kanab, over U. S. Highway No. 89, and State Highways No. 189 and 28.

In order to give the interested parties an opportunity to test out the propriety of the prescribed rates, these rates should be placed into effect not later than August 1, 1939, and continue for a period of six months, or until January 31, 1940, and thereafter until further order of the Commission.

The level of rates prescribed herein is, in practically all cases, sharply reduced under the present level of common carriers' rates now in effect, and below the contract operators' rates in some cases. In many cases, the reductions will run as high as 30 per cent. The transportation costs for the service rendered will, therefore, in the aggregate, be considerably reduced and undue discrimination and prejudice will be greatly minimized, if not entirely eliminated.

We have set forth in exhibits attached hereto (appendices A to L, inclusive) the prescribed schedule of class rates, merchandise rates, and a description of the commodities covered by said merchandise rates, and the ratings to be applied to each type of merchandise. These class and merchandise rates have been set out specifically between Salt Lake City and Provo, on the one hand, and stations, Nephi to Kanab, inclusive, on the other hand.

Class rates should be computed and published by common motor carriers between all intermediate stations on the same basis. The merchandise rates are respectively 80 per cent of first class for commodities rated "A," 80 per cent of the second class for commodities rated "B," 80 per cent of the third class for commodities rated "C," and 80 per cent of the fourth class for commodities rated "D" in the merchandise lists, and should be published by common carriers, southbound, from distributing points on their routes.

Contract carriers should negotiate new contracts with shippers, assessing the merchandise rates hereinafter set out in this report. Said contracts should be filed with this Commission on or before August 1, 1939.

The Commission retains jurisdiction over all rates, charges, rules, and regulations covered by this proceeding, and reserves the right to make whatever further changes and modifications may appear from time to time to be necessary as provided by law.

An appropriate order follows.

[Order and Appendices omitted.]

COLORADO PUBLIC UTILITIES COMMISSION

Re Antanacio Sanchez

[Application No. 4918-PP, Decision No. 13334.]

Monopoly and competition, § 11 — Powers of Commission — Private carriers.

The Commission may not issue private carrier permits if, in their opinion,

the granting of same would tend to impair the service of common carriers rendering a like service.

[April 13, 1939.]

APPLICATION *for a private carrier permit to operate motor trucks; denied.*

APPEARANCES: Antanacio Sanchez, Frederick, pro se; V. C. Garnett, Denver, for Colorado Rapid Transit Company; Marion F. Jones, Denver, for Frank La Roche and The Colorado Trucking Association; Zane D. Bohrer, Denver, for The Motor Truck Common Carriers Association.

By the COMMISSION: On January 4, 1939, Antanacio Sanchez filed his application for authority to operate as a Class "B" private carrier for the transportation of coal from the northern coal fields to Frederick. On January 30, 1939, an order was issued without the formality of a hearing, granting applicant such authority. This has been the practice of the Commission, so far as the transportation of coal is concerned, where it was assumed that no objections would be made by carriers. However, in the instant matter, the Commission was advised on February 24, 1939, by Frank La Roche, of Frederick, who is a common carrier operating under Certificate No. 1012, with authority to transport all classes of freight from point to point within a radius of 4 miles of Frederick and between said area and all other points in the state of Colorado, that he objected to the granting of the permit to Sanchez and requested a hearing upon the application.

Thereafter, said matter was set for hearing at Denver, Colorado, on the 5th day of April, 1939. Applicant appeared and testified in his own behalf in regard to filing his application, securing his insurance and the equipment which he owned. He also submitted a letter from the probation officer of the juvenile court of Denver in regard to his character, which was highly commendatory. Another witness also was present and ready to testify to the same effect.

On behalf of protestants, Mr. La Roche stated that coal was one of the principal commodities which he transported under his certificate; that if the permit was granted in the instant case, it would be difficult for him to continue his service as a common carrier; that he has two trucks, but one stays in the garage most of the time on account of a lack of business; that Charles Liley and Son have authority to haul coal in that area.

Charles Liley, of Frederick, who is a common carrier operator in that district and authorized to transport coal, testified that he owns a Diamond "T" truck and that the granting of any further permits in that territory would tend to impair the service which he is rendering. He formerly owned an International truck as well as his Diamond "T," but was forced to sell the same on account of lack of business.

Under the law, the Commission may not issue private permits if, in their opinion, the granting of same would tend to impair the service of

common carriers rendering a like service. It is clear from the instant record that such would be the condition if this permit were granted. We have sympathy for the applicant and regret that he went to the expense of securing insurance and that it is impossible for us to grant him this means of livelihood. However, it would do no good to grant him the opportunity to make a living if by so doing we deprived others of the same privilege.

After a careful consideration of the record, the Commission is of the opinion, and so finds, that the instant application should be denied.

TENNESSEE RAILROAD AND PUBLIC UTILITIES COMMISSION

Re East Tennessee Light & Power Company

[Docket No. 2259.]

Intercorporate relations, § 2 — Approval of contract — Gas change.

1. The Commission, in authorizing the substitution of natural gas for artificial gas, should neither approve nor disapprove a contract between the gas utility and a pipe-line company located entirely outside the state when, because of lack of jurisdiction over the pipe-line company, the Commission is not in position to pass upon all the terms and conditions set out in the contract, p. 119.

Expenses, § 8 — Reservation of Commission jurisdiction — Cost of purchased gas.

2. The Commission, in approving the substitution of natural gas for artificial gas, reserves its rights and duties of permitting the utility to charge to operating expenses only just and reasonable amounts for the purchase of gas from a pipe-line company under contract where the contract has not been approved by the Commission, p. 120.

Service, § 333 — Natural gas — Change from artificial to natural — Adjustment of appliances.

3. A gas company substituting natural gas for artificial gas should make adjustments of existing customers' appliances without expense to any existing customer, p. 120.

Rates, § 376 — Gas — Change from artificial to natural.

4. Rates for natural gas, substituted for artificial gas, were approved as filed where from reports and records before the Commission it appeared that they would not be more than reasonable, but the Commission reserved its rights, privileges, and duty of changing the schedules at any time in the future whenever the earnings of the company were such as to justify reductions, p. 120.

Rates, § 376 — Gas — Change to natural gas — Proof as to schedules.

Discussion, in concurring opinion, of the propriety of approving natural

gas rates, upon substitution of natural gas for artificial gas, without a complete investigation of the proposed rates, p. 121.

Expenses, § 39 — Cost of natural gas — Investigation of contracts.

Discussion, in concurring opinion, of charges by a public utility, substituting natural gas for artificial gas, for payments under contract to a pipe-line company for its gas supply where, although affiliation is disclaimed, the same person is in managerial control of both companies, p. 123.

(JOUROLMON, JR. Commissioner, concurs in separate opinion.)

[April 11, 1939.]

APPLICATION *for authority to discontinue sale and distribution of manufactured gas and to furnish natural gas, and petition for approval of rate schedules; granted.*

By the COMMISSION: This matter came on for hearing before the Commission this date upon petition filed by the East Tennessee Light and Power Company asking for permission to discontinue the sale and distribution of manufatured gas and to substitute therefor the sale and distribution of natural gas. The petition also asks for approval of rate schedules for natural gas, copies of which schedules are attached to the petition and made a part thereof.

The petitioner sets forth that it is a public utility corporation organized and existing under the laws of the state of Virginia, but domesticated in the state of Tennessee, having its principal office at Bristol, Tennessee, and among other things is engaged in manufacturing, distributing, and selling manufactured gas in and around the city of Bristol, Tennessee.

The petitioner states that within the past two or three years a field of natural gas has been discovered and developed, lying a few miles northwest of the city of Bristol, within the state of Virginia, and that several wells have been brought in within said field, and that some gas is now being used to a limited extent in the state of Virginia. It is also stated that the citizens of Bristol, Tennessee, and Virginia and the governing bodies of said cities have hoped that natural gas would be made available to them at the earliest possible time so that they could enjoy the benefits of a cheaper gas than manufactured gas.

Petitioner further sets forth that checks and investigations have been made of the supply of natural gas in this field by the owners of the field and by the owners of the pipe line who propose to deliver the gas from the fields to a metering point in the territory served by the gas distribution system of the East Tennessee Light and Power Company.

Petitioner further states that from its own investigation it appears that there is an adequate supply of natural gas in said field to supply the present needs of the cities of Bristol, Tennessee, and Bristol, Virginia.

[1] Copy of a contract entered into between the East Tennessee Light and Power Company and the Industrial Gas Corporation is filed as an exhibit to the petition of the East Tennessee Light and Power Company, which contract sets forth certain terms and conditions under which

the Industrial Gas Corporation will supply the East Tennessee Light and Power Company its natural gas requirements for distribution to its customers in the cities of Bristol, Tennessee, and Bristol, Virginia. This contract also provides for the drilling of additional wells to insure an adequate supply of gas.

This Commission is of the opinion that it should not either approve or disapprove the contract entered into between the East Tennessee Light and Power Company and the Industrial Gas Corporation, as of February 8, 1939, since this Commission is not in position at this time to pass upon all of the terms and conditions set out in said contract as it does not have jurisdiction under the laws of the state of Tennessee over the Industrial Gas Corporation, which corporation is a pipe-line company located entirely within the state of Virginia.

[2] This Commission does, however, reserve its rights and duties of permitting the East Tennessee Light and Power Company to charge to operating expenses only just and reasonable amounts for the purchase of gas from the Industrial Gas Corporation, and at this time is of the opinion that the East Tennessee Light and Power Company should be permitted to charge to operating expenses the cost of natural gas as determined by the rates and agreements set forth in said contract and delivered in accordance with the requirements of the East Tennessee Light and Power Company.

[3] It will be necessary for the East Tennessee Light and Power Company to make certain changes in its plant and lines to furnish natural gas service in lieu of manufactured gas, and it will also be necessary for the East Tennessee Light and Power Company to make adjustments of the existing customers' appliances so that the consumers can use efficiently and satisfactorily natural gas of a higher B.T.U. content than the manufactured gas now being used. The Commission is of the opinion that the East Tennessee Light and Power Company should make all the necessary adjustments without expense to any existing customer.

The petitioner further shows that the proposed natural gas rates will not increase the cost of gas to any customer, but on the contrary will result in a reduction in the revenue received from the sale of its gas to customers in Bristol, Tennessee, and Bristol, Virginia, which reduction is estimated to be in excess of $21,000 annually, or approximately 25 per cent. The proposed rate schedules include promotional rates, which give an opportunity to the consumers to make further use of natural gas at less cost than would be possible under the manufactured gas rates in effect at this time.

[4] The Commission is of the opinion from the information presented in the petition of the East Tennessee Light and Power Company, and from reports and records before it, that the earnings of the gas department under the schedule of rates for natural gas as filed, will not be more than reasonable and therefore that the rates as filed should be allowed to become effective at the commencement of the furnishing of natural gas service. The Commission in allowing these rates to become effective at this

time does so reserving its rights, privileges, and duty of changing the schedules at any time in the future whenever the earnings of the company are such as to justify reductions.

The Commission is of the opinion that the welfare of the general public will be best served by permitting the East Tennessee Light and Power Company to distribute natural gas in lieu of manufactured gas and enable the public to use this natural product for its heating requirements at a lower cost than the cost would be for manufactured gas.

It is therefore *ordered* by the Commission, that the East Tennessee Light and Power Company be, and it is hereby, authorized to discontinue the distribution of manufactured gas and to substitute therefor the distribution of natural gas, the natural gas service to be commenced not later than sixty days from the date of this order.

It is *further ordered,* that the East Tennessee Light and Power Company put into effect the schedule of rates filed in this docket, copy of which is attached to this order, as soon as natural gas is supplied to its customers.

It is *further ordered,* that the East Tennessee Light and Power Company make adjustments and conversions of appliances of existing customers without cost to the customer so that natural gas can be efficiently and satisfactorily used by said appliances.

It is *further ordered,* that this Commission retain jurisdiction in this matter so that it may issue such further and future orders from time to time as may be deemed necessary.

JOUROLMON, JR., Commissioner, concurring: I concur in the opinion of the majority of the Commission in approving the change in service from manufactured gas to natural gas and in withholding approval of the contract between the East Tennessee Light and Power Company and the Industrial Gas Corporation. Undoubtedly there are great advantages which will inure to the consumers of gas from such a change. Natural gas definitely offers an improved service, and in the very nature of things such service can be rendered at substantially lower rates than manufactured gas service. The production of natural gas from a field in the vicinity of Bristol means the development of an important resource, the benefits of which should be made available as much as possible to the users of this utility service.

But in certain other respects I cannot agree with the reasoning or the results of the majority opinion. I am by no means satisfied that the rate schedules submitted by the petitioner should be approved. There has been not the slightest evidence presented to the Commission that these schedules are reasonable and fair to the public. Yet the Commission has accepted them as permanent rates, which will not be disturbed until some indefinite time in the future when a rate hearing may be precipitated.

On the face of the rate schedules the proposed rates for natural gas appear to be higher than the present rates for manufactured gas. However, the statements made by the company in its petition, though otherwise unsupported, indicate that the thermal content of the natural gas which will be supplied is approximately twice that of manufactured gas. The result of

this fact will probably be that the actual gas bills of any customer will not be increased, but on the contrary, based on present consumption, there will be a reduction of about $21,000 per year, if we include the customers in Bristol, Virginia.

The Commission has not required the company, by formal hearing, to show that the natural gas rates are reasonable, but has accepted the mere statement that there would be substantial savings to consumers. In my opinion, the record is accordingly wholly inadequate, and this is especially true since there are letters in the file from various parties indicating that the cost to Bristol consumers is from two to three times as high as that to consumers in various comparable cities. The Commission has been advised that the cost of natural gas for 4,000 cubic feet is as follows: In Bristol, Tennessee, $5.28; Williamson, West Virginia, $1.24; Ashland, Kentucky, $1.24; Mount Sterling, Kentucky, $2.53; Princeton, West Virginia, $3.65; Beckley, West Virginia, $2.60; and Memphis, Tennessee, $4.13. With these rates indicated, although not proven, it seems to me that it is incumbent upon the Commission to conduct a searching inquiry, to the end that the change from manufactured gas to natural gas should be effected with the greatest possible reductions and savings to gas customers.

While we may accordingly rejoice that there has been a reduction of $21,000 to customers, there should be no conclusion that this is adequate, because one set of rates applies to manufactured gas and the other to natural gas. This Commission has not taken evidence on the comparative costs of the two commodities in the Bristol area and, therefore, I am not satisfied that a substantial part of the savings, resulting from the introduction of natural gas, will be passed on to customers of the company.

Lower rates for natural gas, as compared with rates for manufactured gas, are not ipso facto reasonable rates for ultimate consumers. The Commission should have taken cognizance of the fact that rates for natural gas in many other cities are lower than those proposed for Bristol and vicinity and should have determined through hearing or investigation whether or not a still greater reduction in rates would provide for the company the amount of revenue reasonably necessary to meet its requirements and at the same time enable customers to use more natural gas without increases in their monthly bills.

The basic fault in the Commission's handling of this case is that it waived a formal hearing and in effect has approved rates and changes of a far-reaching nature which should have been done only after a hearing. There are many questions which are crying to be answered. And these answers should not have been given simply in letters or by guess, but on careful and revealing cross-examination. The question has not been answered as to the sufficiency of supply of the natural gas field. Many questions as to the meaning of the contract between the petitioner, which is to act as the distributing company, and the Industrial Gas Corporation, which is the pipe-line company, remain un-

answered. This contract has not been supported by testimony in open hearing, nor tested by interrogatories and cross-examination on the part of the Commission. Questions could be asked as to the new capital investment that will be put into natural gas service and the value of the present manufactured gas system that will now be relegated to standby plant, and yet these unexamined values will go into the rate base. All of these questions and many more, it seems to me, should have been explored by the Commission, and failure to make a more complete inquiry should restrict the present order of this Commission within limits which the majority opinion has exceeded.

While the majority order properly disclaims jurisdiction over the Industrial Gas Corporation, on the ground that the pipe-line company operates entirely within the state of Virginia, nevertheless permission is granted to the East Tennessee Light and Power Company to charge to operating expenses the purchase price of natural gas as determined by the rate agreements in the contract with the Industrial Gas Corporation. Such permission should not be granted in the absence of a showing of the reasonableness of the price at which the East Tennessee Light & Power Company buys from the Industrial Gas Corporation. It has frequently been held that the reasonableness of the price at which a public utility company buys the product which it sells is an appropriate subject of investigation when the resale rates are under consideration, and that the question of the reasonableness of resale rates is particularly important when there may be a relationship between the buyer and the seller tending to prevent arm's length dealing. United Fuel Gas Co. v. Kentucky R. Commission, 278 U. S. 300, 320, 73 L. ed. 390, 401, P.U.R.1929A, 433, 49 S. Ct. 150; Smith v. Illinois Bell Teleph. Co. (1930) 282 U. S. 133, 144, 75 L. ed. 255, 260, P.U.R.1931A, 1, 51 S. Ct. 65; Western Distributing Co. v. Kansas Pub. Service Commission, 285 U. S. 119, 76 L. ed. 655, P.U.R. 1932B, 236, 52 S. Ct. 283; Dayton Power & Light Co. v. Ohio Pub. Utilities Commission (1934) 292 U. S. 290, 78 L. ed. 1267, 3 P.U.R.(N.S.) 279, 54 S. Ct. 647.

In its application, the East Tennessee Light and Power Co., asserts that "the Industrial Gas Corporation is in no wise affiliated with your petitioner nor with any of this petitioner's affiliated companies." On the other hand, a press dispatch at the time of the signing of the contract between the distributing company and the pipeline company indicated that the same person is in managerial control of both companies. It may be true that there is no "affiliation" between these two corporations through common ownership of voting stock. But there are devious methods to which associated utility companies can resort in order to bring about a community of interests, including stock ownership, interlocking officers or directors, blood relationship, action in concert, or monopolistic price stipulations. It is the plain duty of regulatory Commissions always to inquire into the intercorporate relations of utility companies, and in the instant case this Commission should have determined during the course of a formal hearing

whether or not the pipe-line company and the distributing company contracted at arm's length. Such an inquiry might have an important bearing on the reasonableness of rates to ultimate consumers. A regulatory Commission is not bound by purchase contracts for gas, and especially is this true where the contract is between affiliated companies and the persons are not dealing at arm's length. Municipal Gas Co. v. Wichita Falls (Tex. 1935) 9 P.U.R.(N.S.) 33, 52; Arkansas Nat. Gas Co. v. Arkansas R. Commission, 261 U. S. 379, 67 L. ed. 705, P.U.R.1923C, 714, 43 S. Ct. 387; Union Dry Goods Co. v. Georgia Pub. Service Corp. 248 U. S. 372, 63 L. ed. 309, P.U.R.1919C, 60, 39 S. Ct. 117, 9 A.L.R. 1420; Manigault v. Springs (1905) 199 U. S. 473, 50 L. ed. 274, 26 S. Ct. 127. A question as to the regularity of intercorporate relations, affecting the fairness of proposed rates, justifies the withholding of approval of those rates, until such doubt is dissipated by a full disclosure of the utility company. See Public Utilities Commission v. East Providence Water Co. (R. I. Sup. Ct. 1927) P.U.R.1928A, 141, 143, 137 Atl. 387.

On the basis of statements in correspondence from the company, there is no assurance that the change in service will be more than temporary and experimental. Nor is it entirely clear that, in the substitution of natural gas service, the public interest will be adequately protected. This Commission should have had more concern with respect to this phase of the situation.

The general manager of the petitioner, in a letter to the Commission, states:

"The extent of the known area in which gas may be found is limited and it cannot be definitely stated at this time as to what the extent of the field is. The result of our investigation has convinced us that there is sufficient gas to supply the needs of this community during the 10-year life of the contract. In view of the fact that natural gas is available in this vicinity, the public is clamoring for natural gas service.

"We are, to say the least, confronted with an entirely different situation than would be the case if the supply were unlimited. There is quite considerable risk to be taken by ourselves in changing to natural gas operation, for the reason that the cost to make the change is considerable, both the cost of conversion and the amount of new capital that must be invested in the project which must be done in the face of an immediate reduction in gross and net earnings. It then becomes necessary to put forth much effort in the way of promotional activity to build up the load, and, should it become necessary to convert back to manufactured gas, much of the money so spent would be useless in view of the changed economics of manufactured gas versus natural gas."

Under these circumstances, this Commission should expressly recognize that the program of the East Tennessee Light and Power Company is more or less experimental, that experience may demonstrate that such a plan does not promote the public interest, and that the manufacture and distribution of artificial gas should be resumed. By proposing a voluntary

reduction in rates, to a level which more searching inquiry might or might not prove reasonable for the new natural gas, the petitioner is governed in part by the anticipated recovery of the lost revenue occasioned by the proposed reductions. But the extent of the increase in business, as a result of the reduction in charges, is at the present time purely a matter of judgment and estimate, which must be corrected in accordance with the future experience of the company. See Re Illinois Power Co. (Ill. 1931) P.U.R.1932A, 124, 126, 127.

I do not take the position in this case that an extended and exhaustive inquiry, with its vexatious delays, was necessary before the Commission took action on the application. But I do feel definitely that the Commission should have required a formal hearing in order to cure the inadequacy of the record and to insure the protection of the public interest, particularly in regard to rates. Such a hearing would not have prevented an expeditious disposition of the case, and would probably have resulted in a more satisfactory order respecting the various matters under consideration.

EDITOR'S NOTE. The Commission, in Re East Tennessee Light & P. Co. Docket No. 2300, June 13, 1939, ordered the company to appear before the Commission to show cause why the rates for distribution of natural gas should not be changed and reduced, in view of the receipt of a petition by certain consumers protesting against the rates authorized for the distribution of natural gas and asking for investigation and hearing before the Commission.

ARKANSAS SUPREME COURT

Burl Kelley

v.

State

[No. 4122.]

(— Ark. —, 128 S. W. (2d) 265.)

Public utilities, § 90 — Status of motor carrier.

1. The primary purpose of a statute providing for the regulation, supervision, and control of motor vehicles used in the transportation of persons or property for hire is that of regulating the operation of motor vehicles for hire, and applicants to whom licenses are issued under such statute become common carriers, p. 126.

Public utilities, § 90 — Status of mail carrier — Passenger transport.

2. One who is operating a vehicle regularly over a designated route primarily for carrying mail, but who incidentally accepts passengers for compensation without a license to do so, is using the highways for a purpose within the purview of a statute regulating motor vehicles used in the transportation of persons or property for hire and is subject to fine therefor, p. 126.

[May 1, 1939. Rehearing denied May 29, 1939.]

ARKANSAS SUPREME COURT

APPEAL from a fine in consequence of information charging defendant with having transported passengers for hire in the absence of authority of the Commission; affirmed.

APPEARANCES: Linus A. Williams, of Clarksville, and J. D. Carr, of Russellville, for appellant; Jack Holt, Attorney General, and Jno. P. Streepey, Assistant Attorney General, for the state.

GRIFFIN SMITH, C. J.: The appeal is from a fine in consequence of information charging the defendant with having transported passengers for hire in the absence of authority from the Corporation Commission.

There was a plea of not guilty. Jury was waived. The court heard the cause on the following agreed statement: "The defendant operates a star mail route from Russellville to Harrison, making a trip from Russellville to Harrison and return each day. He carries the mail in a pick-up truck and does not hold himself out as a common carrier of passengers, and did not solicit the carrying of passengers. On the 9th of June, 1938, the defendant let three men ride with him from Harrison to Russellville, and they each paid him $1 for the trip."

[1, 2] Appellant insists he is not a common carrier within the purview of Act 99, Acts 1927, p. 257, approved March 4, 1927, and the acts supplemental and amendatory, and therefore is not amenable to the penalty invoked.

We think the act broad enough to prohibit the transaction admitted by appellant. Title of Act 99 is: "An Act to Provide for the Regulation, Supervision, and Control of Motor Vehicles Used in the Transportation of Persons or Property for Compensation." Section 2 prohibits any person or corporation from operating any motor vehicle, "as hereinafter defined," for the transportation of persons or property for compensation over any improved public highways of the state, unless licensed to do so. Section 3 directs that "Every corporation or person, their lessees, trustees, or receivers, before operating any motor propelled vehicle upon the improved public highways of the state, the counties, or cities, for the transportation of persons or property for compensation within the purview of this act, shall apply to the Commission and obtain a license certificate authorizing such operation."

The only qualifying expression in § 3 is "within the purview of this act."

While it is quite clear that the primary purpose of Act 99 was that of regulating operation of motor vehicles for hire, and while it is equally clear that applicants to whom licenses were issued became common carriers, it does not follow that one who is operating a vehicle regularly over a designated route and who incidentally accepts passengers and exacts compensation for transporting them, is not using the highways of the state for a purpose within the purview of the act. Although the primary purpose of appellant was that of carrying the mails, his secondary or incidental purpose was to carry passengers—otherwise he would not have carried them.

Affirmed.

UTAH PUBLIC SERVICE COMMISSION

Re Earl Morrison

[Case No. 2247.]

Certificates of convenience and necessity, § 73 — Condition as to rates.

1. Authority to operate as a contract carrier will be granted only upon the condition that the rate to be charged for the service will be compensatory and reasonable, where the application for such authority shows that the proposed rate would be unfair and noncompensatory, p. 128.

Return, § 20 — Inadequacy — Destructive competition.

2. It is not fair to the transportation system to permit rates which do not give a reasonable return for the service rendered, since such rates eventually destroy the carrier rendering the service, and impair the service of competing carriers, p. 128.

[June 5, 1939.]

APPLICATION *for permit to operate as a contract motor carrier; granted.*

APPEARANCES: Earl Morrison, for himself; Neil R. Olmstead, for The Utah Idaho Central Railroad Company; B. R. Howell, for The Denver and Rio Grande Western Railroad Company and Rio Grande Motorway, Inc.

By the COMMISSION: On the 5th day of May, 1939, the above-named applicant made application to this Commission for a permit to operate as a contract motor carrier of cinder blocks for the Buehner Cinder Block Company of Salt Lake City over all the highways of the state of Utah.

This application was set for hearing at the state capitol, Salt Lake City, Utah, at 10 o'clock A. M. on the 19th day of May, 1939. All interested parties were given due and legal notice of said hearing.

From the testimony adduced at said hearing, and from the record and files in the case, which are made a part hereof by reference, the Commission finds:

The applicant is an individual trucker, who resides at 358 Ramona avenue, Salt Lake City, Utah.

The applicant has filed a financial statement showing net assets of $1,850, and appears to be financially able to perform the operation herein proposed, and has filed the insurance required of him by law to perform the service he proposes to render.

The equipment proposed to be used by applicant meets the requirements of the laws of the state of Utah. The Buehner Cinder Block Company manufactures building blocks from loose cinders and cement at its plant in Salt Lake City, and it is much more con-

venient to have this applicant go to the plant, load his truck, and haul the cinder blocks to various purchasers than to have them hauled by common carrier service.

B. R. Howell and Neil R. Olmstead appeared to protest the granting of this application on behalf of The Denver and Rio Grande Western Railroad Company and The Utah Idaho Central Railroad Company, respectively. They called the Commission's attention to the fact that they are offering common carrier service to the Buehner Cinder Block Company and can properly take care of practically all its needs. The nature of the business of the Buehner Cinder Block Company is such that delivery of this material is required at any place where a purchaser may be constructing a house or a building. To ship by rail would require in most instances at least one additional loading and unloading more than is necessary in the direct service which applicant proposes to render. The Commission is reluctant to grant such extensive rights as sought by the applicant. From the testimony adduced, it seems to be reasonable and proper to grant the application to the extent that the operation could be performed within a radius of 75 miles from Salt Lake City.

It also appears to the Commission that the highways over which applicant desires to operate are not unduly burdened with traffic. The granting of this application will not substantially detract from, nor impair, existing common carrier service, nor interfere with the traveling public; consequently, it will not be detrimental to the best interests of the people of the state of Utah or the localities to be served.

[1, 2] The rate specified in the contract filed with the application is 2 cents per ton mile. This is not a fair and compensatory rate. In granting this application the Commission requires that this rate be raised to a minimum of 3 cents per ton mile and the authority will be granted only upon the condition that at least that amount be charged for the service. It is not fair to the transportation system to permit rates which do not give a reasonable return for the service rendered. An inadequate rate eventually destroys the carrier rendering the service and has a tendency to impair the service of all other carriers who are forced to compete with such rates.

The Commission therefore concludes that applicant should be granted a permit to haul cinder blocks for the Buehner Cinder Block Company over all the highways of the state of Utah within a radius of 75 miles of Salt Lake City, Utah.

SAVES FINGER STEPS

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EVERY MOTION COUNTS on the New Easy-Writing Royal! Every key and control is deliberately located for quick, split-second action. For example, with MAGIC Margin, there is no more hunting for margin stops. The operator merely positions the carriage, flicks a tiny lever . . . MAGIC Margin does the rest *automatically!* This revolutionary development, exclusive with Royal, is a marvel of simplicity—one of Royal's many Features of the Future, all of which make typing easier, faster, more accurate. Give this New Royal THE DESK TEST In your office—Compare the Work!

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MORE THAN EVER WORLD'S No. 1 TYPEWRITER

Industrial Progress

Selected information about manufacturers, new products, and new methods. Also news on personnel changes, recent and coming events.

Riley Stoker Appoints Andrews General Sales Manager

ROGER W. Andrews has been appointed general sales manager of the Riley Stoker Corporation, Worcester, Mass., manufacturers of steam generating and fuel burning equipment.

Mr. Andrews has had extensive experience in the steam power field. In 1910 he joined the Northern Equipment Company and later became secretary and general sales manager of this company. In 1914, he formed R. W. Andrews Company of Chicago, handling the sale of power plant equipment in the Chicago territory. A year later, he organized the Andrews-Bradshaw Company, which developed in the early twenties in connection with Tracy Engineering Company, certain specialized boiler room equipment. In 1928 this company merged with the Blaw-Knox Company and Mr. Andrews became assistant to the president of Blaw-Knox Company. Since August, 1934, Mr. Andrews has been in charge of the Western Division of Combustion Engineering Company.

Describes Egry System for Utility Use

THE Egry Register Company, Dayton, Ohio, recently issued a brochure on the use of Egry Register System by public utility companies for the control of appliance sales, deliveries and installations.

Known as the Egry Tru-Pak system, the booklet describes its operation by the Indianapolis Power and Light Company, where it maintains complete control and protection over appliance sales, deliveries and installations for this company. The system speeds up the writing of multiple copy forms, provides at a single writing copies for all interested departments, keeps tamper- and alteration-proof audit copies automatically filed under lock and key. In addition the Egry Tru-Pak system fixes responsibility for every transaction, eliminates losses caused by mistakes, prevents misunderstandings and helps maintain harmonious customer relations.

Copies of the brochure describing the Indianapolis procedure in detail may be obtained from the manufacturer.

New G-E Product Bulletins

RECENTLY issued bulletins describing new and improved G-E products include the following: "Auxiliary Relay A-c, Back-connected (Type S-1) Demand Meters"—GEA-3132; "Distribution Lightning Arresters" (isolating gaps for distribution circuits 15 kv and below)—GEA-2976, supersedes GEA 2210; "A-C and D-C Solenoids"—GEA 2080.

Dodge Truck Offers Free Guide For Truck Drivers

A TRUCK driver's guide which enables him to keep operating costs down and to drive with maximum safety, is offered without charge by Dodge Truck Division of Chrysler Corportion according to T. W. Moss, director of truck sales.

Written in simple yet forceful language, the guide covers a variety of key subjects, care and treatment of the truck engine; how to make tires last longer; importance of proper treatment of clutch, brakes and transmission; safety and courtesy on the highway and numerous other topics important to truck driving.

The booklets were prepared originally for distribution at Dodge's current "Wheels of Progress" exhibitions, however, great demand for this "Guide for Truck Drivers" has forced Dodge Truck to make a second printing for fleet owners and operators. The booklet will be mailed free of charge upon request of Dodge Truck Division of Chrysler Corporation, Detroit, Michigan.

Robertshaw Issues Manual On Commercial Cooking

ROBERTSHAW Thermostat Co., Youngwood, Pa., thermostatic heat controls, has just published a new booklet, "Hidden Losses in Your Kitchen and How to Stop Them" which is being given wide distribution in the commercial cooking field.

The booklet, the first of its kind ever published, presents in compact form the overall story of modern gas equipment, its purpose being to educate all factors in the commercial cooking field on the important improvements that have been made in gas equipment in recent years. The booklet should be of inestimable assistance to the salesmen of gas companies and equipment dealers in selling their new equipment to the hotel, restaurant and general institutional field. In addition to being virtually a sales manual, it also provides the kitchen operator with a complete and most convincing story of the advantages of modern gas equipment.

The booklet brings out clearly facts and figures showing how modern gas equipment quickly pays its way in reduced operating costs, savings in food and fuel, and in im-

proved service. Every fact, figure and statement on this subject is substantiated by actual records of successful kitchen operators in all branches of the commercial cooking field.

"Before and after" results in kitchens in various types of institutions in which modern gas equipment replaced appliances that were obsolete, are also presented in the booklet. Fuel costs in a great number of kitchens are analyzed, the kitchen operator being shown the percentages of fuel consumed in his kitchen by the various cooking appliances and what savings and improvements the kitchen operators have made on each and every one of the appliances.

Walker Electrical Company Changes Organization

CHANGES in the organization of the Walker Electrical Company of Atlanta, Georgia, have been announced by its president, Mr. Ralph M. Walker.

In the past few years the Walker Electrical Company, in addition to its electrical contracting business, has built up a large manufacturing business, manufacturing lighting panels, services switches, cutout and junction boxes and steel and aluminum cabinets of all kinds.

Recently the Walker Electrical Company was incorporated as a separate manufacturing business, and the electrical contracting business transferred to a new company known as the White Electrical Construction Company.

Under the new setup, Mr. T. J. Fleischer becomes vice president and sales manager of the Walker Electrical Company. Mr. Walker continues as president.

Mr. K. D. White, who has been partner with Mr. Walker throughout the history of the Walker Electrical Company as vice president, is now general manager of the White Electrical Construction Company. The relations between the Walker Electrical Company and the White Electrical Construction Company, according to the announcement, will become the same as the relations between the Walker Electrical Company and any other contractor.

The sales policy of the Walker Electrical Company will be to sell its products, as far as possible, through the recognized electrical jobbers. This will be followed 100 per cent so far as material going to contractors is concerned.

Transit Publicity Book

"SELL More Rides," a transit advertising handbook has been issued by the American Transit Association, 292 Madison Avenue, New York, N. Y. It contains practical ideas for getting more passengers on cars and buses.

Reproductions of selected newspaper advertisements, outside and inside car cards, and many hundreds of other examples of modern transit advertising material, as used by progressive transit companies throughout the United States and Canada, are shown in this 120-page manual.

Only a limited number of copies have been printed and these are offered to A.T.A. members at approximately the cost of printing—$5.00 per copy. (Price to non-members is $10.).

Silex Announces Tea Maker

THE Silex Company, long known for making one of the most important contributions to coffee brewing with their modern glass coffee maker, announces a contribution of equal importance to tea drinkers—the new Silex Spray Tea Maker.

With this ingenious device, all the tea experts' demands are fulfilled automatically, according to the manufacturer. Boiling water sprays down on top of the leaves which have ample room for expansion in the upper bowl. The period of infusion may be regulated so that tea may be made to suit the taste. At the end of this controlled period of infusion the brewed tea is automatically drawn to the lower bowl—where it may be kept at drinking temperature.

The Silex Spray Tea Maker consists of an ordinary Silex Glass Coffee Maker lower bowl — a special vented upper bowl—and a spray tube. When assembled, the complete model looks exactly like the Silex Glass Coffee Maker.

The brewing operation of the Spray Tea Maker is quite similar to that of the Glass Coffee Maker—except that because of the vent hole in the stem of the upper bowl—it is impossible for the water to rise until it is at an active, bubbling boil. Then the water goes up the tube—sprays—still boiling—down on top of the tea leaves.

Complete tea makers for either electric or non-electric service, as well as special vented upper bowls and tea sprays, are now available.

"Give!" says Government *and*

its "TAKE" exceeds the total income of the Western half of the United States—and the end is not yet.

IN 1938, the income of the darkened area of this map was $17,696,000,000.

But in 1938, Government, Federal, state and local, spent about $18,000,000,000.

That's more than the entire West realized from all the products of its year's work.

It equals nearly 30 cents of every dollar the nation's producers earned in 1938.

And what did it buy?

Well, for one thing it bought relief from distress for the needy. Everybody agrees to the rightness of doing that. But only one dollar out of six was spent for relief.

Most of the other increases in spending go for innovations in government service.

The last few years have seen the creation of 67 new Federal boards, commissions, administrations and authorities, agencies to supervise every activity of business from peanut-vending to steel production. Likewise, open and indirect competition with all business.

The question is *not* whether these are desirable government functions.

The question is whether the country wants expansion of government, which must be *paid for* by increased taxes—

Or wants expansion of business, which *pays* in jobs and wages.

For the increased money that now goes into government spending is the money that formerly went into new products, new factories, bigger payrolls. There isn't enough in the earned dollar to go both ways.

Less Taxes—More Jobs

This message is published by

NATION'S BUSINESS

—a monthly magazine edited in Washington, where business and politics meet. Established 1912. 315,000 business men and women subscribe. Begin reading Nation's Business now.

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PROFESSIONAL DIRECTORY

• These pages are reserved for engineers, accountants, rate experts and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design and construction. « « « « «

PROFESSIONAL DIRECTORY (*concluded*)

INDEX TO ADVERTISERS

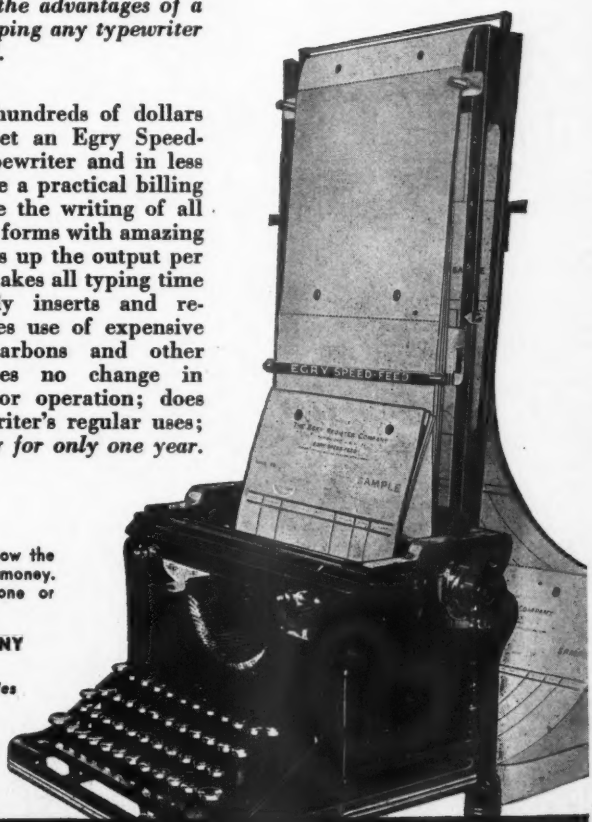
[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]

*Fortnightly advertisers not in this issue.

Billing Machines for 2c per day!

Almost unbelievable is the fact that, at a cost of less than 2c per day for only one year, you may enjoy all the advantages of a billing machine by equipping any typewriter with an Egry Speed-Feed.

No need now to invest hundreds of dollars in a billing machine. Get an Egry Speed-Feed! Slip it on any typewriter and in less than one minute you have a practical billing machine, ready to handle the writing of all multiple copy continuous forms with amazing speed and precision. Steps up the output per operator 50% or more; makes all typing time productive; automatically inserts and removes carbons; eliminates use of expensive preinserted, one-time carbons and other costly methods; requires no change in typewriter construction or operation; does not interfere with typewriter's regular uses; *costs less than 2c per day for only one year.*



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POWER—To Look Beyond The Horizo

TELEVISION offers man a new power, the power to see beyond the horizon. And it offers him, too, a new use for power—for the power which comes from your lines.

We do not yet know exactly what television will achieve as a social force. We know only that it represents another step forward in man's mastery of time and space—another step achieved by electricity. But we *are* sure that it *will* accomplish two things, at least.

First, television will create employment, because new products make new jobs.

Second, television will some day represent welcome new domestic use for electricity. In this it will repeat the hist of electric light, electric refrigeration, radio; for these and hundreds of ot domestic and industrial products w reared in the laboratories of industry.

Television represents a new way to m electricity useful, a new way to mak serve the public. It is a spectacular dition to the long list of convenien created by manufacturers' ingenuity powered by electricity.

General Electric's contributions in bri ing new uses of electricity out of laboratory on to your lines represent one of the *extra* benefits that you en as a result of your purchases of Gen Electric equipment.

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